Workers' voice and Employment Tribunals in Britain: From employment professionals' perspective.

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Date 11/1/2016

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ABSTRACT

The thesis examines the operation of Employment Tribunals in Britain, elaborating and testing a series of propositions deriving from the industrial relations tradition. These concern the ways in which workers' experience employment, conflict, representation and 'voice' at work. They reflect the significance of the transition that workers with grievances make from the relatively supportive experience of the workplace community to the more alien legalistic environment of the Employment Tribunal. The overarching hypothesis is that the experience is a negative and disempowering one for the majority of workers. To test the propositions, a selection of senior experts with great experience of Employment Tribunals was interviewed. The results confirm the overall hypothesis, especially in the light of the recent changes to Employment Tribunals' operation made after 2012. At the theoretical level, the thesis contributes by validating and elaborating Budd and Colvin's criteria for worker-friendly procedures; policy recommendations are also made.

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"*When you set out on your journey to Ithaca,*
pray that the road is long,
full of adventure, full of knowledge…. *…..Ithaca has given you the beautiful voyage.*
Without her you would have never set out on the road.
She has nothing more to give you." C.P. Cavafy

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Katerina Sidiropoulou-London, January 2016

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LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
ACAS	Advisory, Conciliation and Arbitration Service
ASAP	Asylum Support Appeals Project
ASHE	Annual Survey for Hours and Earnings
BPBU	Bar Pro Bono Unit
BIS	Department for Business Innovation and Skills
BLS	Bureau of Labor Statistics
CAB	Citizens Advice Bureau
CATI	Computer Assisted Telephone Interviewing
CB	Collective Bargaining
CMD	Case Management Discussion
COET	Central Office of Employment Tribunal
COP	Code of Practice
CPR	Civil Procedure Rules
DPA	Data Protection Act
DR	Dispute Resolution
DTI	Department of Trade and Industry
EAT	Employment Appeal Tribunal
EC	Early Conciliation
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECSO	Early Conciliation Support Officer
EHRC	Equality and Human Rights Commission
EMLC	Ethnic Minorities Law Centre
EOC	Equal Opportunities Commission
EPSU	European Federation of Public Service Unions
EPZ	Export Processing Zone
ERDRA	Employment Rights (Dispute Resolution) Act
ERRA	Enterprise and Regulatory Reform Act
ESS	European Social Survey
ET	Employment Tribunal
EU	European Union

FWO	Fair Work Ombudsman
FRU	Free Representation Unit
FTZ	Free Trade Zone
GMB	British Trade Union (originally General Municipal Boilermakers)
GUF	Global Union Federation
HMCTS	Her Majesty's Court and Tribunal Service
HR	Human Relations
HRA	Human Rights Act
IES	Institute for Employment Studies
ILO	International Labour Organisation
ILRF	International Labor Rights Forum
IR	Industrial Relations
ITS	International Trade Secretariat
ITUC	International Trade Union Confederation
JCC	Joint Consultative Committee
KAD	Kvindeligt Arbejderforbund (Women workers)
KCTU	Korean Confederation of Trade Unions
KWWA	Korean Women Workers Association
LDC	Labour Disputes Commissions
LI	Labour Inspectors
MOJ	Ministry of Justice
NMWA	National Minimum Wage Act
NIDL	New International Division of Labour
NAFTA	North American Free Trade Area
NEF	New Economics Foundation
OBR	Office for Budget Responsibility
OECD	Organisation for Economic Corporation and Development
ONS	Office for National Statistics
PCC	Pre-Claim Conciliation
PCS	Public and Commercial Services
QC	Queen's Counsel
ROET	Regional Office
SBEE	Small Business, Enterprise and Employment

SETA	Survey of Employment Tribunal Applications
TNC	Transnational Corporation
TS	Tribunal Service
TU	Trade Union
TUC	Trade Union Congress
TULR(C)A	Trade Union and Labour Relations (Consolidation) Act
UD	Unfair Dismissal
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
US	United States
WC	Works Council
WERS	Workplace Employment Relations Survey

Chapter 1: INTRODUCTION

The present thesis examines the operation of Employment Tribunals (ETs) from employment professionals' perspective, a topical issue due to recent legislative changes (introduced in April 2012, July 2013 and April 2014) which brought back to the fore issues which either tend to be ignored or were partially resolved a few years after their establishment (i.e. the question of offering informality, speed and so on). Its rationale is rooted in the likelihood that the transition from collegial workplace support, union representation and union mobilisation to less supportive external environments (such as the ETs) will be a negative experience for workers. In the literature, there is a gap with regard to how the transition from work to external bodies is experienced by workers. I have applied Budd and Colvin's framework, a solid, well-conceptualised, complete framework which examines the effectiveness of dispute resolution (DR) systems, based on three important standards: equity, efficiency and voice.

This particular topic is worthy of exploration because there is an imperative need to pay more attention to the 'weakest' party in an employment dispute settlement, namely the worker, especially considering the effects of the current crisis in the employment sector. Employment belongs to everybody. However, it appears that employees' rights have become seriously threatened during these last decades. Additionally, the study made a considerable contribution to the field of employment relations by demonstrating the whole journey from the time a workplace conflict arises until its resolution in ETs. I collected the insights of important employment professionals (through eighteen expert interviews and a phenomegraphic approach) who shared their intimate tribunal experience. Mainly, workers were not chosen for interview, partly since employment professionals provided a thorough overview of the situation, based on their wide experience and their specific knowledge of laws and also because of workers' poor emotional state prior to and at the end of each ET hearing. Most importantly, the study resulted in the refinement of Budd and Colvin's (2008) conceptual framework as well as the proposal of seven policy recommendations for an effective ET system.

1.1 How the research questions are derived

Based on the literature on collective voice, when a worker directly 'communicates' with his or her employers without any assistance from experienced representatives, he or she is exposed to victimisation; whereas, for instance, when a worker acts

collectively, he or she has a stronger voice and feels more protected (proposition 1 and 2) (see below). It has similarly been shown that when a worker is engaged with hostile, unknown and adversarial legal procedures, concepts such as equality, non-discrimination and equitable treatment do not really apply (as expected in workplace environments) and the worker feels stressed and disadvantaged (proposition 1 and 2).

In addition to these, it is important to determine whether culture, race, ethnicity, class, status and power affect workers' position in the ETs. According to the literature, workers who are different in terms of culture, race, and ethnicity are treated differently (proposition 3) (see below). Women workers face similar problems, encountering pay inequality, the tension of being treated differently from men workers because of their differing employment and social status (proposition 4) (see below). Class, status and power inequalities explain why those with a lack of education and developed skills and thus less aware of how legal systems operate are disadvantaged compared to those with advanced education and social status (proposition 5) (see below).

Moreover, secondary data have shown that many workers have turned to the ET system due to the current decline in workers' and unions' power (Coats, 2010; Ministry of Justice, 2015c). Appendix 1 is evidence of the rising volume of cases in ETs over the past 40 years (from 10,000 to 200,000). More specifically, in the 1970s-1980s, the average number of the tribunal claims was around 35,000 whereas in the 1990s they had already doubled and reached 81,000. During the last decade, it has been noted that the average number of claims was quadrupled (148,000). In 2009, the number of claims reached the highest point (236,000).

Research aims, objectives and propositions

The main aim of the present study is to investigate how workers experience the ET system (*the central research question*). This is pursued through the following of objectives:

- To identify the origins of collective and individual conflicts in employment.
- To examine the literature on workers' perceptions, feelings and experiences about the ET system.

- To explore and reach conclusions as to the optimal ways of resolving disputes through the evaluation of relevant theoretical models and of existing representational workplace mechanisms, based on workers' perceptions.
- To identify whether there are optimal conditions for workers in the existing extra-workplace environment, that of the ET system.

To address the main research question and approach these objectives, five propositions have been formulated, based on the existing literature on collective voice and the ETs.

1) Representation in ETs will be vital for all workers.

2) Workers with representation at ETs will experience ETs more positively than unrepresented workers.

3) Minority ethnic workers will experience ETs negatively, in relation to others.

4) Women workers will have relatively negative experiences in ETs compared to men.

5) Unskilled workers will have more negative experiences in ETs than workers with higher levels of education and skills.

Hence, the examination of the above propositions was of great importance because it assisted in reaching conclusions as to whether the ET system is the optimal DR mechanism for all categories of workers or, put differently, whether workers experience extra-workplace mechanisms positively or negatively compared to workplace mechanisms. This was executed with an awareness of the literature on how workers are experiencing workplace representational systems, when they act collectively or with the help of their unions.

1.2 Structure of the study

The first chapter introduces the research aims, the research question and propositions as well as the structure of the thesis. In Chapter Two, the underlying causes of the collective disputes are addressed and analysed as a preliminary to analysing ways of resolving them. Additionally, it is clarified why these causes arise within the employment context. Chapter Three examines why individual conflicts arise in the workplace. A synthesis of the origin of conflict and its causes in these varying contexts

is reached. Chapter Four provides a vital background for determining how workers experience disputes and their resolution with existing voice mechanisms and processes. The study also focuses on the optimal factors of collective representation and mobilisation, workers' basic needs responsible for unions' effectiveness.

Chapter Five examines alternatives to mobilisation (arbitration, mediation and conciliation) when this is absent and sees if any of them is optimal for workers. Later, Budd and Colvin's framework is introduced for the evaluation of the only available extra-workplace justice system, that of the ET system. Chapter Six describes the transition from workplace to extra-workplace systems. Furthermore, it examines the existing literature on the ET system and on workers' tribunal experience.

In Chapter Seven, there is a detailed presentation of the methodological approach (phenomenography) and research instrument (expert interviews) of this study. In Chapter Eight, the data collected from the employment professionals and the findings from the literature review are analysed in accordance with Budd and Colvin's metrics. Then the ET system is evaluated.

Finally, Chapter Nine concludes by clarifying which literature is confirmed and identifying empirical and theoretical contributions. Seven policy recommendations and the research limitations of this study are presented. I conclude with my reflections on this learning journey.

Chapter 2: THE ORIGINS OF COLLECTIVE CONFLICTS

It is impossible to identify the major impact of ETs - the tribunals that have statutory jurisdiction to hear and determine claims over employment matters - without first gaining a thorough understanding of the origins and development of the concept of employment conflict and identifying its major elements. Since the 1970s, the number of tribunal claims has increased from some dozen to some hundred (Appendix 1).

In particular, this chapter discusses existing theories on the immediate causes of collective conflict at work. Significant theoretical contributions are critically evaluated to set a context for the rest of the study and identify those works appropriate for use in this research. Hence, fundamental conflict theories are examined and then more relevant, detailed theories on conflict in the employment relationship are analysed.

2.1 Founding theories of conflict

Contemporary understanding of employment conflict is the product of the social reconstruction and development the concept underwent during the last three centuries. Thus, it is crucial to begin by examining the developed works of the scholars who produced fundamental ideas regarding the origins of conflicts.

I start by analysing Adam Smith's theories (1776) on how conflict is structured into the employment relationship precisely, as competition among capitalists means that labour power must be bought at the cheapest price possible. Smith's theory allows for conflict to be regulated by workers; where they have the power to restrict the supply of labour (via apprenticeship and excluding non-craft workers, for instance), they can increase the price of their labour. Smith (1776) and Marx (1867) shared the 'labour theory of value', whereby the value of products was determined by the amount of labour bestowed on them, but the two men drew different conclusions. As we will see, I operate under Marx's theory that the capitalist extracted 'surplus value' from the employee because the power relationship between employer and employee was weighted towards the employer. Thus, Marx identified the fundamental contradiction between capital and labour as the source of conflict both in the employment relationship and capitalist society more widely. In so doing, he built on the insight of Smith (1776), Ricardo (1817) and others in that the interests of employer and employee differed because of the employer's interest in purchasing labour power as cheaply as possible or paying less than its value, while employees clearly wished to maximise their

incomes. Finally, I discuss Max Weber's theory; Weber adopted Marx's concept that class is a source of social change and struggle arising from the interactions of social actors and that property ownership is the main source of class division (Weber and Runciman, 1978). Thus, Weber accepted much of Marx's view of the sources of conflict between employers and employees. It appears that the fundamental difference between the Marxian and Weberian theories is that the elatter's theory develops a broader sociological view that includes key concepts such as status.

Smith developed the theory of growth based on the concepts of 'division of labour' and 'freedom of exchange'. He believed in the power of purchasing, arguing that a free trade (*laisser-faire*) system was the most effective (Marroquin, 2002). In particular, he advanced the idea that whenever each individual (for example, merchants, and manufacturers) strives to become wealthy by pursuing his own gain being driven by the 'invisible hand[1] of the market'. The individualistic character of market leads to the functional division of labour within the production process which allows for capital accumulation. Free market serves as the institutional foundation of the system, ultimately promoting public good, or the '*system of natural liberty*', as Smith put it.

We find an apparent exception to this natural harmony of interests in an early description of class conflict (in Smith's case, the dispute over wage differences). In 'Of the wages of labour' (1759), Smith discusses the formation of wages in the manufacturing sector in terms of the diverging interests between labourers and capitalists and emphasises conflicts of interests and the imbalance of power between three social classes, the '*orders of every society*' and their three relative sources of revenue, or *the components of natural price*: the landowners and the rent of land; the wage earners and the wages of labour; and finally the capitalists and the profits of stock. *Wage earners* were entirely dependent on their wages for survival, unlike the other 'orders' of society. The wages of labourers fall when they bid against one another because of the limited opportunities for employment. On the other hand, their wages rise when employers compete against one another for limited supplies of labour (Smith, 1976, Book II, Chapter 3). *Landowners* are for economic expansion to raise rents and *capitalists* are for narrowing competition to raise profits. It is important to note that, similar to most of the elite of his time, Smith was opposed to both state intervention in

[1] This phrase was used by Smith, only once in each of his two major works.

labour markets (for instance, in legislating to improve workers' conditions) and workers being in 'combinations', known as TUs. He considered both to be 'distortions' of the market.

Smith's rationale for a free-market economy in which each rationally self-interested individual tries to maximize his own advantage, differentiates from that of Marx, who supported the argument that workers will always be exploited by capitalists. Thus, despite his contention that the interests of workers conflicted with those of capitalists, Smith supported capitalists, whereas Karl Marx conducted a profound analysis on the operation of capitalism from workers' perspective, arguing that Smith's idealist capitalist system leads to an inequitable society.

Unlike Smith, Karl Marx built massively on that initial insight. He believed that all wealth is produced by labour ('the labour theory of value'), but that it is the expropriation of part of the labourer's product that creates a conflict of interests.

Marx, together with Friedrich Engels (*Das Kapital*, 1867, *Grundrisse*, 1857-8) and Max Weber (*Economy and society: an outline of interpretative sociology*, 1978) provided the groundwork of basic conceptual ideas that would develop over the following decades, right up to the present day. In particular, they advanced the theories about the creation of social conflict, the unequal distribution of societal status and the multidimensional view of social stratification.

Conflict, for Marx, cannot be simply reduced to questions of misunderstandings, failures to communicate and so on; rather, it remains latent or submerged in capitalist society until workers move from being objectively deprived of the full fruits of their labour to being subjectively aware of that deprivation. When workers are aware that they are the object of oppression (this is known as *class consciousness*), they may become an active force in challenging that exploitation and seeking to overcome the inherent contradiction. This consciousness could either be a 'TU' consciousness in which they simply seek to bargain up the cost of their labour, to increase its self-confidence and strengthen its organisation, or it could go a step further to become 'class consciousness' in which the entire system might be challenged (in Callinicos, 2007, p.96). The second situation might be desirable for Marx, but it was, as he admitted, only rarely achieved. *Class solidarity* (a term coined by Marx) is essential in

order to form a class and implies the close collaboration of workers to achieve political and economic aims. Thus, class was a fundamental source of latent or unrealised conflict in capitalist society that could be consciously pursued in more than one way (TU or class consciousness).

For the first time in history, Marx explained the underlying causes which generate social conflict. Based on his social and economic theories (the theory of alienation, the labour theory of value and the materialist conception of history), he analysed the evolution of society through a critical and materialistic approach which served as a heuristic tool and defined conflict as the basic structural element of society. He discerned the struggle of two social classes as the most important source of social conflict in a capitalist society which is responsible for any change within its structure. In general, Marx views class as a powerful causal factor due to its potential "to determine access to material resources, to affect the use of one's time and the character of one's life experiences within work and consumption" (Turner, 1996, p.133). More specifically, Marx referred to two types of social class: the *bourgeoisie,* the exploiters who own the means of production (such as land, labour, machinery, raw materials and factories); and the *proletariat,* the exploited, the working class that owns little or no property and works for wages. Consequently, industrial conflict originates from the economic structures of capitalist society, and stratification exists because those in the upper class seek wealth as well as power and the subordination of the lower class. Hence, Marxism mainly emphasised class differences and paid less attention to gender and ethnic inequalities.

Marx argued that all societies could be described in terms of their mode of production.[2] Any changes in the mode of production are brought about by the opposition between the forces of production[3] and the relations of production[4] which both form the economic base of capitalist society (*infrastructure*). He believed that the economic base of society determines the organisation of the *superstructure*, which is comprised of legal, political, religious, family and educational systems that operate to maintain the capitalist economy.

[2] i.e. the way of producing
[3] i.e. labour power and means of production
[4] i.e. the social relations that exist between individuals in the production of goods

This capitalist mode of production (i.e. capitalistic agriculture, industrialism) would result in a remarkable growth in productive capacities as competition for profit would encourage capitalists to invest in new technologies. Wright (2005) represented Marx's class analysis graphically (Figure 2.1).

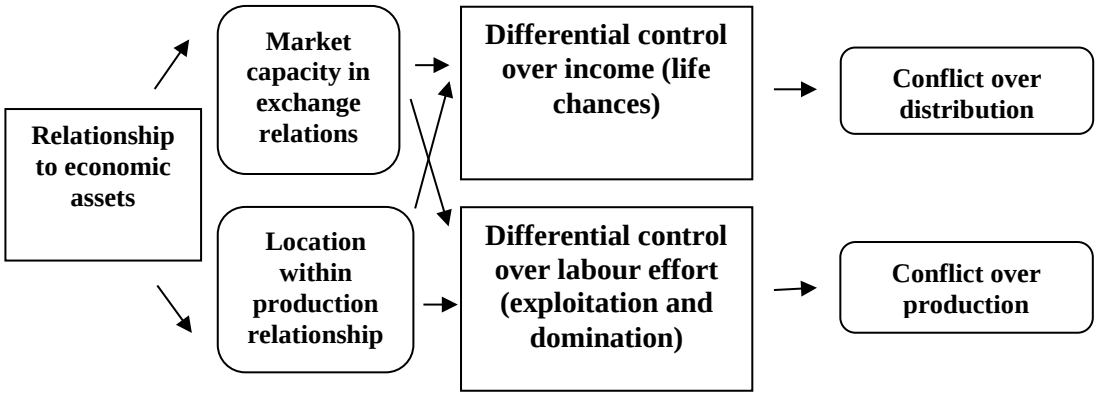

Figure 2.1: Marxist class analysis (Source: Wright, 2005, p.26)

Once more, it appears that social factors are the central motives behind conflicts, namely, the unequal distribution of wealth between segments of society, the domination of the upper class and the exploitation of the lower class. The Marxian interpretation is fundamental as it provides a basic socialistic explanation for the causes of conflict in economic environments. Marx highlighted the importance of the nature of social relationships because, according to his theories, the development and structure of human society depended on the clash of contradictions.

Marx's model of social stratification was later adopted by Max Weber, who enriched it by identifying other causes of conflict in addition to class differences. Weber's work is a general theorisation of the 'social' in relation to the spheres of economics and politics. The 'social' concept for him implies a process of socialisation that involves reciprocal and meaningful exchanges between groups and individuals.

While Marx based his theories on structural changes deriving ultimately from the *economic* base of society, Weber argued that differences in *power*, *social status* and *social prestige* are at least equally responsible for such changes (Weber, 1978, p.927). For Marx, these were parts of society's 'superstructure' and, although important, were not fundamental. According to Marx, classes were rooted in economic conditions and the control of the means of production, whereas Weber claimed that they were also defined by the market situation (i.e. life chances) and the level of skill of individuals (Figure 2.2).

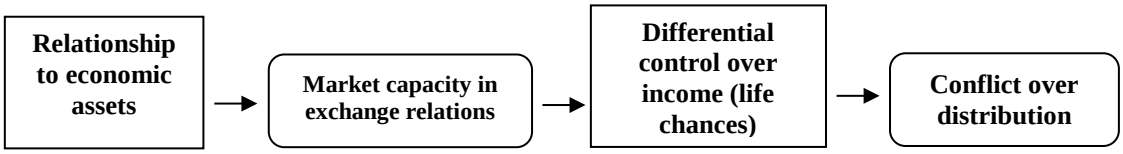

Figure 2.2: Weberian class analysis (Source: Wright, 2005, p.26)

For both Weber and Marx, class was one of the determinants of social inequality and change. In a way, Weber reassessed, modified and elucidated Marx's stratification model. He also tried to explain class in terms of monopoly, as the separation of labour from the means of production gives a monopoly to those who control the means of production. The redefined term *class* or *class power* which plays a minor role for Weber (1978, pp. 927-928) refers to the bases for social action where:

> *(1) a number of people have in common a specific causal component of their life chances [inequalities in opportunities], (2) this component is represented exclusively by economic interests in the possession of goods and opportunities for income, and (3) is represented under the conditions of the commodity or labour markets.*

This is known as *class situation*; it involves the sharing of common life chances between the members of a class and is determined by individuals' market situation (Wright, 2005, p.32). Thus, when the market situation prevails, the possession or lack of 'property', be that property material goods, or skills, qualifications and services, becomes the key element of class analysis. As such, those who cannot contribute to the market do not constitute a class (Hamilton, 1991). More specifically, Weber (1978, p.305) advocated the idea of the multiplication of class divisions, that is, the working class (lower class), the petty bourgeoisie (lower middle class), property-free intelligentsia and technical specialists (upper class) and those privileged through property and education, rather than the tendency towards polarisation of society into two opposing sides, as it was suggested by Marx.

Weber introduced another separate but related fundamental source of conflict, the *status* or *social power* concept. Status is the social estimation of honour, defined by a person's rank, position or way of life (Bendix, 1992, p.82). To clarify the role of groups related to status from social classes, Weber provided a variety of definitions. *Status situation* refers to "any activities involving individuals acting as members of groups who share lifestyles, habits of taste and the pursuit of social esteem" by affecting their life chances (Morrison, 2006, p.306). Giddens (1973, pp.130-131) explained those life

chances as those that an individual has "for sharing in the socially created economic or cultural 'goods' that typically exist in any given society". Thus, *status groups* are:

> *a social grouping that forms outside the market and are characterised by patterns of consumption and the pursuit of specific lifestyles and the habits of taste that qualify members of a group for distinctions based on their standing or status.* (Morrison, 2006, p.305)

These status groups can be distinguished from other groups because they employ certain criteria to evaluate their social worth, based on individuals' life style choices. They separate themselves by accepting only those with the necessary status qualifications within their boundaries and prohibiting others from possessing commodities which confer honour (Morrison, 2006). Consequently, individuals who possess high skills and high market capacity will have the best life chances; a critical factor that creates the difference in classes (Bilton *et al.*, 1996, pp.144-145). As a result, perceived differences in individuals' status may lead to workplace conflicts. Individuals and groups which have a higher status than others can possibly engage in conflict with lower status groups.

Weber recognised *political power* or '*party*' as an additional source of conflict. Parties occur within society and take a more formal form to realise political ideals and goals. They are "associations that aim at securing power within an organisation or the State for its leaders in order to attain ideal or material advantages for its active members" (Hurst, 2007, p.206) and influence decision-making procedures based on religious affiliation or nationalist ideals. Hence, power is:

> *the chance of a man or a number of men to realise their own will in a social action even against the resistance of others who are participating in the action* (Weber, 1978, pp.926-940),

Weber was of the opinion that power comes from authority which grows from the acceptance granted by those subjected to it. Power relations reflect the unequal and asymmetric relationship which exists between those with a great deal of power and those with less. Normally, power is interrelated with status, such as in those cases that may occur when an individual has questionable influence over another, i.e. when a superior influences subordinates' (downward power) or the subordinates influence the decisions of the leader (upward power) (Greiner and Schein, 1988). However, it is expected that individuals in positions of authority, both in organisations and in society, usually influence others.

Thus, for Weber, conflicts, other than those caused by differences in class and social power, may well be due to the struggle for domination, i.e. for political power. All three components form his theory of social stratification (Table 2.1), according to which the classification of individuals into groups, i.e. their socioeconomic categorisation within a societal structure, is made in relation not only to wealth, ownership of capital, but also to power and prestige dimensions. As such, those with limited or no political or socioeconomic power feel more deprived and unequal to those who have these. This situation can easily lead to conflict.

Table 2.1: Spheres of power: class, status, party (Source: Bottero, 2005, p.41)

Class	Economic order	Economically determined market situation	Economic interests affecting life-chances-a possible basis for action	May give rise to social groups
Status	Social order	Social prestige or honour (lifestyle and consumption)	Social judgements of taste and prestige as the basis of association and social distance-may be linked to class –but need not be	Actual groupings
Party	Political order	Political parties, clubs	Acquisition of power-may be linked to class and/or status –but need not be	Actual groupings

Weber was not only interested in capitalism as a system of action in a social situation, but also in human behaviour and motivation (psycho-behavioural perspective). He classified social relationships and actions based on Karl Marx's and Ferdinand Tönnie's formulated concepts of 'Gemeinschaft' (community) and 'Gesellschaft' (society). The latter term refers to the *social relationship that is associative* "if and insofar as the orientation of social action within it rests on rationally motivated adjustment of interests or similarly motivated agreement" (for example, modern business relationships) (Weber, 1978, pp.40-41). The former term refers to the *communal social relationship* which is based on "the subjective feelings of the parties, whether affectual or traditional, that they belong together" (for example, family and workplace relations) (Weber, 1978, pp.40-41). Using this classification, Weber wanted to describe the transformation of industrial society, the historical process of social change from communal to associative social relationships. In early society, individuals used to have strong ties between them as they shared their experiences and services with the other members of society. Later, individuals started to become isolated and strive for their personal advantage and interest, by minimising any exchange of

assistance (Berger, 1978). Consequently, following Weber's analysis, conflicts will not emerge and will be avoided in societies where communal social relationships prevail.

Therefore, Weber saw the groups of individuals in society as varied, not only along the class dimension, but also along the dimensions of power and status. Hence, according to Weber, struggle cannot occur based on class terms only, since class is not the only dimension to influence the structure of social relationships.

The above section covered the fundamental work and analysis of the 'big thinkers' who massively contributed to the literature of origins of conflicts. The following section examines theories which focus on more limited and immediate causes of collective conflicts.

2.2 Theories on causes of collective conflicts

The work of classical theorists of class conflict was further scrutinised in more contemporary theories of collective conflicts. Among these, I focus on industrial relations theory, human relations theory as well as on key racial, feminist and cultural theories since these provide the best reflection of the employment conflict at the collective level. There are a variety of theories which can elucidate why a collective conflict may exist in employment relations. I concentrate on those theories that support explanation by providing the essentials in understanding the underlying causes.

In general terms, collective disputes may relate to disagreements regarding wages, profit-sharing, hours of work, rules of discipline and so on, between the collective of employees of an organisation and the employer/s, often but not always represented by the TUs (Kumar, 2003).

As Marx explained, despite the fact that labour power is offered by the employee for sale as a commodity, conflict seems to occur when the employer transforms labour power[5] into actual labour.[6] In particular, conflicts tend to arise when labour is exploited because employers need to secure the creation of economic surplus, through the development of the productive power of social labour, in return for a money wage

[5] i.e. an employee's ability to work, the capacity to labour

[6] i.e. an actual productive work, activity or effort of producing goods and services, the use-value of labour power

and their object to maintain control. In 1924, Commons argued that labour contract is not a contract, but:

> *a continuing implied renewal of contracts at every minute and hour based on the continuance of what is deemed, on the employer's side to be satisfactory service, and on the labourer's side what is deemed to be satisfactory conditions and compensation.* (1924, p.285)

Kahn-Freund (1972) described the contract of employment -'the cornerstone of the modern labour law system'- as a relationship in which there is an economic and social subordination between the involved parties. More specifically, he pointed out that:

> *the relation between an employer and an isolated employee or worker is typically a relation between a bearer of power and one who is not a bearer of power. In its inception it is an act of submission, in its operation it is a condition of subordination, however much the submission and the subordination may be concealed by the indispensable figment of the legal mind known as the 'contract of employment.* (Kahn-Freund, 1972, p.7)

Additionally, he argued that:

> *the main object of labour law has been, and...will always be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship.* (Kahn-Freund, 1972, p.7)

Collins (1999) identified three components in the contractual relationship (not only in the employment context), i.e. the relationship between the parties, the deal, and the contract. However, he believes the contract to be the least important element due to the possibility of legal difficulties and the damage that could be done to the relationship by resorting to the law (for instance, if the written document does not reflect the mutual expectations of parties in reality, then contract law fails and effective bargaining is not promoted) (Collins, 1999).

Akerlof (1982) viewed this relationship as a partial gift exchange, meaning that some employers willingly pay more than market-clearing wages by expecting the employees to contribute more in terms of effort. Edwards (2003, p.14) later considered the difficulty to design rules which actually exhibit the "beliefs, ideologies and taken for granted assumptions as well as formal provisions of rights and obligations". Therefore, it is the exchange of pay for an uncertain amount of effort over a long or indefinite period that leads to workplace conflicts.

Edwards (2003) described every employment relationship as an economic exchange between two asymmetric parties, the employer and the employee,[7]with unequal power resources and different interests mainly over the sale of labour power. Additionally, he identified two other institutions which are indirectly involved in this relationship, namely, the state and the employee representatives or TUs[8] (Figure 2.3).

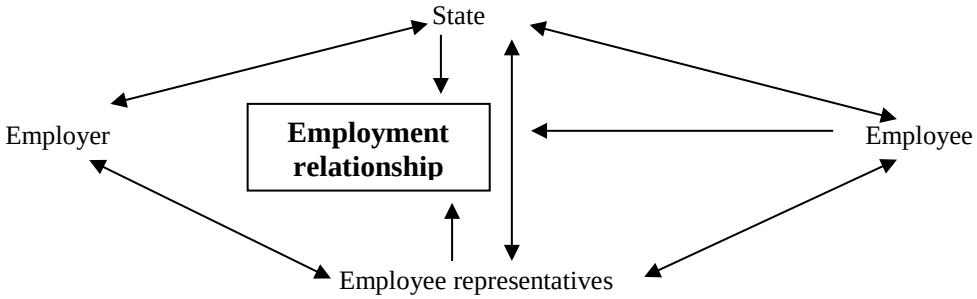

Figure 2.3: The employment relationship (Source: Edwards, 2003, p.9)

Thus, employment relationship is showed as an inherently asymmetric relationship due to the economic and social power imbalances between the employee and the employer as well as the legal fiction that is used to regulate it.

Accordingly, it is important to examine the main cause of conflict in the employment relationship, based on the industrial relations theory.

[7] Under s.230 (1) of ERA 1996 an 'employee' means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment. 'Contract of employment' means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing (s.230 (2). On the contrary, under 230 (3) of ERA 1996, a 'worker' (except in the phrases 'shop worker' and 'betting worker') means an individual who has entered into or works under (or, where the employment has ceased, worked under) (a) a contract of employment, or (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

[8]Under s.1 of Trade Union and Labour Relations (Consolidation) Act (TULR(C) A) 1992, a trade union is "an organisation which consists wholly or mainly of workers of one or more descriptions and whose principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers' associations". The TUs that are affiliated to the TUC are 'independent' of any employer, which means that TUs are "(a) not under the domination or control of an employer or group of employers or of one or more employers' associations and (b) not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control (s.5 TULR (C) A 1992)".

Industrial relations theory

The Industrial Relations (IR) theory has its origins in liberalism[9]. The initial founding 'fathers', the Webbs, took reformist views. Hence, the term 'liberal' covers US-type 'liberals', i.e. reformists, and British 'liberals', i.e. economic liberals or conservatives. They were well aware of Marxism – which informed pluralist conceptions of IR – although they did not adopt it themselves (Harrison, 2000). Fully-developed Marxist critiques of normative IR emerged much later. The focal point of modern IR is labour process.

According to the theory, this labour process where 'labour power' is separated from the worker is the most direct location of the conflict of interest in the employment relationship, as there is conflict over the price of labour and the wage-effort relationship. As discussed above, Marx (1978, I: 45) described it as a "special commodity...whose use-value and therefore also the use of it, can increase its exchange-value or the exchange-value resulting from it". Thus, Marx emphasised that there is an exchange around the price of labour between capital and labour (*market relationship*), whereas his later IR interpreter, Edwards (1986), saw only a socioeconomic exchange between an employer and an employee (*market and managerial relationship*), also recognised by Marx.

Based on Fox's theoretical perspectives on IR, Edwards tried to explain theoretically how the employment relationship works and how conflict occurs. Fox's (1966) frames of reference elaborated the issue of conflicts within the employment relationship (Table 2.2). According to *unitarism*, organisations are viewed as unified entities in which parties have common objectives, and workplace conflict occurs as a result of troublemakers, misunderstandings, psychological issues or mischief; the conflict is dysfunctional, as in a 'pathological social condition that disturbs the normal state of organisational equilibrium' (Farnham, 2000; Wood, 2004). Warner and Low (1947) saw it as a "dissociated and disintegrative phenomenon". McGregor (1960) and Argyris (1964) found in their analysis that a workplace conflict is 'unnatural, subversive and destabilising'. In contrast, when following the *pluralist* approach, management and labour (unions) have many diverging interests and goals; conflict is regarded as

[9] Liberalism represents "the minimum of direct intervention with respect to regulatory laws and to the conduct of TUs" (Poole, 2013, p.105).

inevitable, and collective bargaining (CB)[10] plays an important role as the balance of employer-employee power can bring about negotiating outcomes (Clegg, 1979; Watson, 2008). The *radical* view was based on Marxism and developed into these structural patterns as a critique of pluralism, noticeable power inequalities in industrial capitalist society and related workplace disputes (Watson, 2008, p.279).

Table 2.2: Conflict frames of reference (Source: Macky, 2008, p.439)

	Radical Pluralism	**Pluralism**	**Unitarism**
Conflict	Inevitable under the capitalism system of class inequities	Unavoidable but can be mediated through structures and procedures, such as procedures and systems of employee representation	Unwarranted and pathological to the well-being of the organisation
The state	Protects the interests of the management	Provides the mechanisms to resolve conflict in the interest of 'public good' and stability	Resists interfering unduly in the relationship between the employer and employee
Management	Exploits employees in the interest of profit	Co-ordinates different and divergent interest groups	Controls employees through strong leadership
Employees	Powerless and vulnerable to exploitation	Stakeholders in the organisation with the right to challenge management	A resource unified to achieve the organisation's goals
Trade unions	Necessary as a result of exploited workers protecting their own interests	The legitimate representative of the employees' collective interests	Unnecessary intrusion in the individual employment relationship

In addition to the above, the *functionalist* or consensus theory maintains that industrial conflict is inevitable, and systems of stratification are functional for the society of which they are part (Farnham, 2000; Andersen and Taylor, 2006). In particular, functionalists believe that workplace disputes exist because of the variance of interests between employers, employees and unions. Ferraro (2006, p.302) agrees with the functionalist view that "open class systems are integrative to the extent that they promote constructive endeavour". According to this perspective, social inequality and stratification motivate individuals to cover all different positions within a society for the survival of the whole, by leaving some functionally important positions to be filled, normally by the upper classes, better educated, more talented or professionally trained people (Andersen and Taylor, 2006). Thus, inequality is based on a reward system that motivates people to succeed and have better life chances when they work hard. Society is envisaged as a social structure of interdependent individuals or institutions organised

[10] Under s.178 (1) of TULR (C) A 1992, 'collective agreement' means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers' associations and relating to one or more of the matters specified below; and 'collective bargaining' means negotiations relating to or connected with one or more of those matters.

in such a way as to meet its needs (Stephens and Leach, 1998, p.51). If a component part does not perform a function (manifest or latent), then it ceases to exist. 'Function' is defined as "the contribution a part makes to order and stability within the society" (Ferrante, 2007, p.28). At the same time, poverty seems to serve economic and social functions in the society (Andersen and Taylor, 2006, p.187).

After clarification of the main cause of all workplace conflicts, four additional theories have been identified in this study as fundamental frameworks to explain other possible causes of collective conflicts further. These are: the human relations theory; the theory of race relations; the social theory of gender; and the cultural dimensions theory. The human relations theory has been extremely influential as it can be considered a far-reaching and comprehensive theory based on humanistic arguments. The other three are sociological theories in the sense they derive from collective characteristics which I will then examine in practice. The purpose is to explain the conflict between workers[11] as well as between managers and workers, but the two are not mutually exclusive and I will only be interested in the conflicts between managers and workers (further details in s.4.4). In short, they are chosen for their sociological importance in relation to the study.

The discussion starts with the only non-sociological theory in this study, the human relations theory, which is equally important to the sociological theories in this analysis for the reasons that are explained below.

Human relations theory

The human relations movement focuses on the importance of the 'social man' in work-related situations and the understanding of the 'human' (*research into the nature of man*), non-logical, irrational, sentimental side of the employee.

Elton Mayo (1946), the founder of this movement, with his associates, Roethlisberger and Dickson differentiated their position from Marxism and functionalism. More specifically, they saw organisation and management from a more socio-psychological approach as they concentrated on the 'organisation person' to examine how conflicts arise and how productivity is affected. In broad terms, Mayo characterised the social class conflict as "a deviation from the normal state of human actions and attitudes"

[11] It is known as intra-organisational conflict.

(in Fisher and Sirianni, 1994, p.186). Conflict is considered to be a natural phenomenon that cannot be eliminated, but it "should be viewed as making a contribution to increasing the performance within a group or organisation" (Robbins, 1998, pp.434-435). Mayo *et al.* conducted two experiments in a Philadelphia textile mill and the Hawthorne plant of Western Electric Company, and two other studies in defence plants from 1924 to 1933 (Mayo, 1924; Roethlisberger and Dickson, 1939). They claimed that the causes of an industrial conflict are more psychological (for example, group pressure, working hours), and physical and environmental (for example, humidity, the brightness of lights) rather than economic, ultimately concluding that industrial conflict itself is a social disease (in Coser, 1956).

The human factor is of great importance for the representatives of HR movement, though, as Mayo believes, it is being ignored by economics. This approach is one of the most significant contributions, since it studies the human factor and behaviour in the workplace in profound detail. Workers are seen as unique individuals with personal needs, special abilities and personality traits rather than self-interested optimisers as in classical economics. Hence, employees' morale is influenced by: the way they are treated in their working environment (feeling important or isolated); the satisfaction of their social demands in the business organisation; and the recognition of their status position. Consequently, conflict tends to arise when workers' emotional needs are violated, i.e. when the environmental conditions create problems or their social needs for interaction at work are in some way unaccomplished.

So far, the causes of collective conflicts have been shown to be psychological, physical, and environmental, but most importantly, they result from differences over labour power, the most fundamental cause of all workplace conflicts. As Marx (1964, p.122, 124, 129) argued, all other causes are more or less the consequences of workers' 'alienation (*Entfremdung*)' from: (1) the object of his/her labour, its product (as ... "a power independent of the producer"); (2) the act of producing ("the alienation of the object of labour merely summarises the alienation in the work activity itself"); (3) himself ("...the poorer the worker becomes in his inner life… the less he belongs to himself")' and (4) other workers ("what is true of man's relationship to his work, to the product of his work and to himself, is also true of his relationship to other men… each man is alienated from others . . .each of the others is likewise alienated from human life"), and thus from society at large.

On the other hand, conflicts also arise because the working class is treated differently by employers due to the effect of racial division within the working class (see below). Therefore, the study now provides explanations of the causes of collective conflicts by moving to more sociological approaches.

Racial theories

Race remains one of the main causes of conflict within employment relations. Race relations and race disadvantage are examined in relation to social class and status. Employment or unemployment is strongly linked to the above forms of discrimination as income depends on the status and the labour market power of the employee (Rex, 1983; Rex and Mason, 1988; Hall, 1980).

Race is not just a fact of biology or genetics, but a matter of social interpretation. In the beginning, race was solely regarded as "an essentially biological concept based on those distinctive sets of hereditary phenotypical (biologically based human) features that distinguish varieties of mankind" (Smith, 1988, p.189). However, in the contemporary world, race is a concept that is determined by historical, economic, social and political factors.

The term 'racism' has been used to describe "the prejudice against one or more racial groups that manifests itself in hostile behaviour toward all members of those groups" (Levine and Pataki, 2004, p.28). Racial discrimination is comprised of two elements: "differential treatment on the basis of race that disadvantages a racial group and treatment on the basis of inadequately justified factors other than race that disadvantages a racial group (differential effect)" (Blank *et al*., 2004, p.39).

Sometimes, 'ethnicity' is employed as a relative concept in the issue of conflicts and in relation to divisions within a society, especially when these conflicts cannot be interpreted in racial terms, but can be defined on the basis of culture, diversity, language, religion and nationality (Bradley, 1996). Parkin (1979) used the concept of status to explain that ethnic groups (i.e. Aztecs, Brazilian, Cubans, Persians) were negatively privileged status groups. Additionally, if theories on split labour market (capitalists, cheap labour and higher-priced labour) are also taken into consideration,

it becomes more understandable that cheap and higher-priced labour is ordinarily drawn from various racial or ethnic groups (Rex and Mason, 1988).

The question that arises is why racial discrimination can be a causal factor of conflict in employment relations. According to Marx's analysis of race, racial division served as a tool of capitalism, which furthered exploitation and obstructed class-based relations. This was achieved when the elite used racism to divide workers into 'blacks' and 'whites'. Bohmer (1998) noticed that this was gradually accepted by the white workers whose 'false consciousness' decreased the ability of workers to struggle as a united group for better wages and working conditions. As a result, in such cases, conflicts arise when the racial factor helps employers to maximize their profits by reducing the average wages (a common class interest) of a racially divided working class from those of a united one, by exacerbating racial divisions, reducing the collective power of the working class and increasing the rate of exploitation of labour power.To put it another way, "the Negro people are oppressed because the rulers of capitalist society find it highly profitable to oppress them" (Wilkerson, D., in Aptheker, 1946, p.8).

Some scholars have considered race relations 'autonomously' from the other types of social relations, while others have approached it 'relatively autonomously'. Hall (1980) argued that race has a 'relative autonomy' from other economic, political and ideological relations, meaning that "there is no one-way correspondence between racism and specific economic or other forms of social relations" (in Rex and Mason, 1988, p.92). He disagreed with other scholars who believed in the dichotomy of class and race. He suggested that while race cannot be reduced to other social relations, it cannot be explained separately from them as it affects them. Race, in his view, influences class consciousness, class fractions and the organisation of all classes (in Rex and Mason, 1988). Contradicting this view, Gabriel and Ben-Tovim argued that racial-ethnic relations are fully autonomous to class relations and products of ideological and political struggles (in Malešević, 2004).

Rex (1983, p.72) described race relation situations as:

> *those of severe conflict going beyond that which is normal in a free labour market, which (this conflict) occurs between any groups in certain conflict situations and is justified in terms of some sort of deterministic theory that has been of a biological sort.*

In particular, the *race relations* concept includes three elements: a) a situation of differentiation, inequality and pluralism as between groups and of severe competition, oppression, exploitation and discrimination (*structural condition for race relations*); b) the relations are between bounded groups with limited opportunities for inter-group mobility (*structural condition*); and c) the justification and explanation of this discrimination in terms of some kind of implicit or explicit theory, frequently but not always of a biological kind (*these situations are interpreted by social actors in terms of a deterministic theory of human attributes*) (Rex, 1983, p.30).

Today there are some (community) support centres in the UK that mostly provide free legal advice and less free representation services (for example, Ethnic Minorities Law Centre (EMLC), Asylum Support Appeals Project (ASAP), Kalayaan/Justice for migrant domestic workers, Advocacy Project, Community Legal Advice, Day-Mer, Southall Black Sisters).

To conclude, race cannot be simply seen as a genetic or biological category, but rather as "a social construct in which the social significance that people attach to various physical traits creates meaning and generates racial boundaries and ultimately racism" (Jones, 2001, p.1296). Thus, any social pressures and prejudice may influence the working conditions and the interests of a racial group in a business environment by causing conflicts in addition to those of class, power and status. However, race conflict cannot be examined independently from class, power and status because practice has shown that these concepts are interconnected in employment relations.

Feminist theories

Gender classification is another sociological criterion that may influence employment relationships and create conflict situations. Empirical studies have shown that women tend to have limited or no access and control over resources, unstable income sources, restriction from labour markets, exclusion from high status positions and low career aspirations (International Labour Organisation [ILO], 2009; Albin and Mantouvalou, 2012; Ogle, 2000; Wajcman, 2000; Honeyman and Goodman, 1991). These are the consequences of women's dual function as domestic and wage workers. The awareness of their economic, political and social subordination and the extent of the existence of

conflicts of interest compared to those of men are an important cause of disputes in the workplace.

Feminist theories were established within a sociological perspective and focused on social change, power, how men and women were situated in society, how gender related to social inequities. Hutchison (2003) contends that a 'just world' is based on gender equity. The significance of gender is pointed as a variable influencing social pattern and being the most profound example of stratification (Giddens, 2006). According to the feminist theories, gender concerns "the psychological, social and cultural differences between males and females" (Giddens, 2006, p.458) and is defined as "a source of social inequality, group conflict and social problems" (Leon-Guerrero, 2010, p.478). Gender has been also defined as:

> *a practice organised in terms of or in relation to the reproductive division of people into male and female...a process rather than a thing, the property not just of individuals, but also of institutions, collectivities and historical processes, such as the formation of the state.* (Connell, 1987, p.140)

Connell articulated a theoretical 'structural' model of gender by stating that gender should be analysed as structured around the following four groups of social relations: relations of power, relations of production, relations of emotion, and symbolic relations. Thus, he identified three major structures (but not the only ones) through which one can explore the gender composition, namely: a) *labour* that refers to the sexual division of labour in home and labour market; b) *power* that operates through social relations such as authority, violence and ideology in institutions, the state, the military and domestic life: and finally, c) *cathexis* that concerns the dynamics within intimate, emotional and personal relationships (in Giddens, 2006, p.463). Moran (1988, pp.993-995) stated that his attempt at synthesis was both ambitious and provocative. Some others (West, 1989; Edwards, 1989) found the breadth of his synthesis impressive and the book valuable to all sociologists, as "it presents an excellent summary account of where the social theory of gender has come from and where it should be going" (Edwards, 1989, p.279). Nevertheless, it can be said that by separating all these structural features, he perhaps oversimplified the complexities of gender relations and missed their interconnections.

Scholars generally agree that male workers are treated as the norm, whereas women are seen as marginal and of secondary interest and their employment is largely unskilled, of low status, poorly paid, casual, seasonal, and irregular (Wajcman, 2000; Honeyman and Goodman, 1991). Murdock (1949) argued that this division is not a biological-based outcome, but the logical basis for the organisation of society. Hence, all these conditions which scholars have noticed in real practice and concern women's labour in the majority can be regarded as serious workplace causes of conflict.

In particular, *socialist* feminists claim that sociology has been dominated by male perspectives and they regard a patriarchal society fostered by capitalists as the basis of social problems. The term 'patriarchy' refers to "a society in which men dominate women and justify their domination through devaluation" and it has also expanded to include societies in which powerful groups dominate and devaluate the powerless (Warren and Cady, 1996, p.165). Honeyman and Goodman (1991, p.609) defined patriarchy as "a pervading societal system or set of institutional arrangements which accepts, reinforces, or structures male hegemony." According to Engels (in Marx and Engels, 1848), capitalism strengthens 'patriarchy' when power and wealth concentrates on men's hands (wage-earners, possessors of property). Engels also noticed the low payment of men and the absence of payment for women. Unfortunately, the power and wage inequality deteriorates the position of women position in the workplace, a fact which reinforces the occurrence of conflicts between women and men.

Applying Marx's analysis of women's exploitation through wage labour, women often face the 'double burden' of wage and unpaid domestic labour to the subject we see that. They do essential work in the reproductive sphere as well as the productive one, in a division of labour that predates even prehistoric societies. The vast majority of domestic workers are women who "typically work in private homes, performing various household tasks, such as cleaning, gardening and caring for children or elderly people" (ILO, 2009; Albin and Mantouvalou, 2012, p.2). Hence, women remain responsible, without any reductions in their burden, for the reproduction of their family's labour power on a daily basis (for survival reasons), irrespective of their increasing participation in the paid workforce (George *et al*., 2009). More than a third of the entire household income is spent on childcare costs (i.e. nursery, nanny fees, child-minder) after housing costs (Bingham, 2014; Whittaker, 2013). The significance

of their role led to the 'domestic labour debate' which arose in the late 1960s. Marxist feminists were challenged to comprehend the material basis of women's oppression as arising from their contribution to capital accumulation, by attempting to define this household production and measure its economic value (in terms of capitalism), through the unsuccessful application of market measures to non-market production (Ogle, 2000).

Liberal feminists have been criticised for not acknowledging the existence of powerful interests hostile to the concept of equality for women and referring only to independent deprivations (i.e. unequal pay, discrimination, and sexism) that women experience. Wajcman (2000, pp.186-187) perceived money as one form of gender power relation in the workplace, used as a measure of all things, including equality and social justice in employment. Thus, pay inequality is an issue (Hall, 2011).

Lastly, *radical* feminism posits that men exploit women in domestic labour and obstruct women's access to powerful and influential positions in the labour market (patriarchy) (Walby, 2010; Crow, 2000; Mackay, 2015). Therefore, the existence of the patriarchy factor reveals that gender inequality is present in the work environment and cannot be ignored as an insignificant cause of conflict.

Furthermore, throughout history, women have fought back against inequality, discrimination, injustice and oppression in the workplace. In the past, their actions were limited and therefore mostly disregarded. In the 20th century, this tendency for women to battle as a specific group of workers seemed noticeable and has intensified. Particularly, throughout the years, women's issues have started to be seriously taken into account by organisations or forums such as the International Labor Rights Forum (ILRF), the Korean Women Workers Association (KWWA), and the Kvindeligt Arbejderforbund (KAD) [Women workers union in Denmark], organised with the aim to promote strategies that will advance: a) the economic, political and social rights of skilled/unskilled women workers (especially migrant workers, informal workers[12]) or those workers in export processing zones who are women in the majority and in a weaker position); and b) their equitable treatment at work (Son, 2007; International Trade Union Confederation [ITUC], 2008; Wonani, 2010; ILO, 2012b). Some of the

[12] This term is explained fully in s.4.1.1, p.58.

rights of female workers are: the right to work; the right to regular pay and working hours; the right to access to health care; the right to work in safe and non-hazardous work environments; the right of freedom of association; the right to be protected from sexual harassment in the workplace and other workplace-related sexual violence; and the right to maternity protection, allowances and benefits (ILO, 2000). So far, it is the ILO which has responded and provided significant labour standards[13] regarding women workers.

Overall, gender inequality in the workplace is translated in terms of prestige, power and wealth. It is generally noticed that as a result of the prevailing division of labour between the sexes which rewards the role of men more than that of women, women benefit less than men, who are normally seen in privileged positions in the professional hierarchy. Nevertheless, throughout the years, women appear to persist in organising themselves collectively to change the situation and receive some protection by guaranteeing their basic workplace rights, despite having the responsibility to support both their roles as wage and domestic labour.

The last, but not least significant group of factors contributing to the possibility of conflicts within working environments is what can be termed as cultural factors.

[13]E.g. the equal remuneration for men and women workers for work of equal value (art. 1(b) Convention no. 100 of 1951), the equality of opportunity and treatment in respect of employment and occupation [in relation to Convention no.156 of 1981 which applies to workers with family responsibilities], with a view to eliminating any discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin (art. 2 and art. 1(a) Convention no.111 of 1958), maternity protection in order to ensure that a) women will not lose their job simply because of pregnancy b) paid maternity leave is granted and c) their or their infants' health is not harmed by securing adequate time to give birth, to recover, and to nurse their children (Convention no. 183 of 2000), the equal treatment of full- and part-time women workers (Convention no. 175 of 1994), the improvement of the situation of home-workers (the majority of whom are women), in consultation with the most representative organisations of employers and workers and, where they exist, with organisations concerned with home-workers and those of employers of home-workers (art.3 Convention no. 177 of 1996), the non-employment of women without distinction of age during the night in any public or private industrial undertaking, other than an undertaking in which only members of the same family are employed (art.3 Convention no.171 of 1919).

Cultural theories

More or less all concepts that have been analysed so far (i.e. class, status, power, race-ethnicity and gender) and are related to conflict have been shown to be interlinked (s.2.1-2.2). In this section, an equally significant factor discussed is that of culture. Despite being a more contemporary notion than others (as origins are found in the 19th century), it is also embedded in conflicts (LeBaron and Pillay, 2006). Hence, attention is paid to the notion of organisational culture and explanations are provided as to how the absence of cultural awareness leads to an employment conflict.However, culture cannot be considered independent from other relative factors such as those of race and ethnicity that were discussed above.

The variety of cultures can influence relationship with others, appropriateness of behaviour (LeBaron and Pillay, 2006) and, accordingly, any conflict situation that arises in the workplace. Indicatively, Kroeber and Kluckhuhn (1952, p.357) stated that culture:

> *consists of patterns, explicit and implicit, of and for behaviour acquired and transmitted mainly by symbols, constituting the distinctive achievement of human groups, including their embodiments in artefacts; the essential core of culture consists of traditional (i.e. historically derived and selected) ideas and especially their attached values*.

Later, Hofstede (1984, p.21) characterised culture as:

> *a collective phenomenon, because it is at least partly shared with people who live or lived within the same social environment, which is where it was learned. It is the collective programming of the mind which distinguishes the members of one group or category of people from another*.

According to Schwartz (1992, p.324), culture:

> *consists of the derivatives of experience, more or less organised, learned or created by individuals of a population, including those images or encodements and their interpretations (meanings) transmitted from past generations, from contemporaries, or formed by individual themselves.*

Thus, it is implied from the above definitions that this sharing of ideas, symbols and values among groups mainly derives from the different racial-ethnic background of the individuals, which is formed by socioeconomic, historical, political, linguistic, religious, gender factors and so on (LeBaron and Pillay, 2006).Therefore, cultural

awareness has the ability to shape individuals' behaviour, perceptions and identities (Williams, 1994; Avruch, 1998), ease the evolution of employment relations, and eliminate the occurrence of workplace conflicts.

Particularly, according to Hofstede's (1980) 50-country (and 3 regions) study, differences were found in the work-related behaviours and attitudes of 116,000 managers and employees (all with different cultural backgrounds), despite the fact that they were working in the same US multinational organisation ('national/regional culture'). In particular, Hofstede identified five main dimensions of 'national/regional culture' (i.e. closely related, although not the same as racial) that may exist: 1) individualism versus collectivism[14]; 2) power distance[15]; 3) uncertainty avoidance[16]; 4) masculinity versus femininity[17]; and 5) long-term orientation versus short-term orientation[18] [Confucian dynamism] (Hofstede, 1980, 1991; Jones, 2007; Mukherjee, 2009). Nevertheless, his work has been criticised. His national cultural descriptions are regarded as invalid and misleading, his characterisation of culture as limited, his sampling procedure and assumptions as flawed and his measurement methodology as problematic (McSweeney, 2002; Gooderham and Nordhaug, 2003; Brookes *et al*., 2011).

In addition to the above, culture also seem to define the structure and the operating norms of the environment as well as the personality of an organisation (this is known as 'organisational culture'). It has been noticed that there is a relation between national and organisational culture (as explained below) since national culture (i.e. the fundamental invisible values, symbols, rituals, traditions of individuals living in a region) influences organisational practices and processes (Minniti *et al*., 2006; Pauleen, 2007; Adler and Gundersen, 2008; Mead and Andrews, 2009).

Most important here is 'class culture'. The term is pertinent to a variety of cultures that are identified as: the cultures of the upper (middle) class, of the elite (high culture); the cultures of the masses (low culture); the folk cultures that serve in integrating

[14] i.e. whether individuals prefer to work alone or in groups
[15] i.e. the degree of inequality of power between a person at a higher level and a person at a lower level
[16] i.e. the extent to which members of a culture feel threatened by uncertain situations
[17] i.e. the degree to which masculine traits/cultures [e.g. assertiveness, authority] dominate feminine ones [e.g. quality of life, relationships]
[18] i.e. the degree to which a society focuses on the future or present/past

communities through the cultural practices of a particular custom by a small rural group of individuals through oral tradition/history; and the popular or ‘pop’ cultures which are not tied to a specific location and function in a way to incorporate the mass of the population into society (Kirby, 2000; Marsh and Alagona, 2008; Gans, 2008, Swanson, 2009).

Thus, it is understood from the discussion above that the absence of class cultural awareness matters since it is more difficult to understand culture’s impact in the workplace and easily misrepresent communicative behaviours, intents, personalities and motives, which are the commonest causes of cross-cultural conflicts. Hence, any cultural misunderstandings and culture clashes that are noticed in the workplace will affect social interaction patterns, work processes, levels of performance and productivity.Additionally, these could result in cross-cultural differences in communication, decision-making, leadership and managerial styles, approaches to task completion, and conflict resolution (Harris *et al*., 2003).

Moreover, there is a range of different but sometimes overlapping cultural classifications which provide frameworks for identifying international differences in culture and organising the complex dimensions that form part of a culture. It has been demonstrated that “organisations are culture-bound and their practices are influenced by collectively shared values and belief systems” (Harris *et al*., 2003, p.39). For instance, Hall (1960) identified five different dimensions of cultural differences (*dimension paradigm*): time, space, things, friendships and agreements. Subsequently, Kluckhohn and Strodtbeck (1961) developed a cultural orientations framework covering the following issues: relationships with people, mode of human activity, belief about human nature and relationship with time. Schein (1985), in relation to the Kluckhohn model, added two more dimensions, that of relationship with nature, and truth and reality. Furthermore, Adler (1991) agreed with Schein’s dimensions but referred to two others, that of culture space and individualism/collectivism. Hofstede’s (1991) framework is widely used and known for his four key dimensions that explain the cultural differences: individualism/collectivism, power distance, uncertainty avoidance, and masculinity/femininity. Trompenaars and Hampden-Turner (1998) extended Hofstede's classification to include universalism versus particularism, collectivism versus individualism, affective versus neutral relationships, specificity

versus diffuseness, achievement versus ascription, relationship with time, relationship with people and relationship with nature.

It is clear that culture and conflict are inseparable. According to Avruch and Black (1993, pp.133-134), “culture is always the lens through which differences are refracted and conflict pursued”. Additionally, no clear explanation of its role and effect can be expected if it is analysed in the ignorance of other related factors which co-exist within the societal framework.

2.3 Conclusions

It seems that there are various causes of collective employment conflicts, with their origins being mainly social rather than psychological. It can be argued that all these types of causes affect workers’ interests in a different way. Nonetheless, an interaction is noted, despite this variance.

The founding theories of conflict (Smith’s theory of the market, Marx’s conflict theory, and Weber’s theory), as discussed in s.2.1, have shown that economic interests and decisions are affected through social relations. The unequal distribution of economic assets (known as class divergence) is owed to structural changes within an industrial society (socioeconomic approach). However, if we consider the features of the ‘Gemeinschaft’ (community) concept, there is a possibility of workplace disputes to be eliminated (psycho-behavioural approach) because a community is more cohesive than a society. In addition to these, other possible reasons for the occurrence of conflicts have shown to be differences in wages, and the existence of political and status inequalities (s.2.1).

Due to these economic and social power imbalances, the employment relationship is an inherently asymmetric relationship (s.2.2). Hence, according to the IR theory (s.2.2), once the labour power is separated from the worker, there is a conflict. This is regarded as a natural, ongoing and an inherent part of all employment relationships. Therefore, it is not unnatural or irrational that it has to be suppressed by all means and, if it exists, is perceived to be induced by troublemakers, bad communications or poor management

practices, as the unitarist approach[19] holds (s.2.2, p.16). Its occurrence leads to strikes, low wages, social inequality and so on.

Four additional theories (the human relations theory, the theory of race relations, the social theory of gender, and the cultural dimensions theory) have also been identified to explain other, but less fundamental, causes of collective conflict (s.2.2). The former theory is the only theory that supports that the causes of conflict are psychological, physical and environmental. The rest clearly demonstrate that the origins of collective workplace conflicts are social (i.e. racial, gender and cultural inequalities).

Nevertheless, it is noticed and concluded from the above conflict analysis that Marx's theory (s.2.1) is the most fundamental from the existing theories. This is because it thoroughly captures, enhances and explains the social causes of conflict between the workers and the owners, partly because it was built on Smith's initial great work and further elaborated by Weber and Edwards.

[19] By definition, the unitarist approach argues for consensus in organisations; "there is no fundamental conflict between those who own capital and those who supply their labour; by definition, all are part of the same team" (Bray, 2005, p.20), whereas the pluralist approach argues that there is "the likelihood of diverse interest groups and multiple forms of loyalty and attachment"; therefore, the industrial conflict is an inevitable and legitimate consequence of the variety of interests in the workplace (Bray, 2005, p.13).

Chapter 3: THE ORIGINS OF INDIVIDUAL CONFLICTS

The previous chapter illustrated how workers' problems arise directly from the employment relationship and I determined that a wide range of social factors such as gender, race and culture operate to give rise to collective workplace conflicts.

This chapter examines the origins of individual conflicts. All the theories, both at collective and individual levels, are considered to provide valid insights into the social origins of conflict in employment.

3.1 Theories on causes of individual conflicts

Individual conflicts have also social origins. Throughout the years, research studies have shown that individuals in the workplace have the tendency to compare and evaluate themselves with others on social or other terms, rather than staying isolated, to acquire information about themselves (see later analysis on social comparison theory). More specifically, they want to discern whether their beliefs, thoughts and opinions are the same or different from those of their peers with whom they interact at work, whether they are inferior or superior, stronger or weaker and so on (Brugha, 1995; Hargie, 2009).

It has also been observed that individuals are normally selective as to the person they choose to make the comparison with, when they feel that they are experiencing similar work-related situations (Suls and Wheeler, 2000). Therefore, employees may refer to someone who works in the same or a different organisation and holds the same or a different position from them. Alternatively, they may refer to someone who seems to present a reasonable similarity to them due to their need to seek social approval and avoid social censure (Hogg and Vaughan, 2009) or to be compared to anyone in the absence of such a benchmark. Thus, the choice of comparison target plays an important role in the shaping of an employee's judgement about his or her performance at work, personal satisfaction and relative rewards.

In particular, social comparisons are made because individuals care to maintain justice and equity within organisations serving their long-term material interests in that way (Adams, 1965; Thibaut and Walker, 1975). This is examined in terms of whether an employee's rewards are distributed proportionally according to his or her contribution at work and in comparison with what he or she sees others receiving. Additional

attention is given to the social variations in perception regarding fairness in the process. Thus, it matters for an employee to form a just judgement as the basic aim is to secure and protect their interests (Colquitt and Greenberg, 2001). Cropanzano and Rupp (2002, p.225) pointed to the role of justice because they posited that justice provides economic benefits, validation of close interpersonal relationships and the sense that moral principles are upheld.

Accordingly, Festinger's social comparison theory and Adams' equity theory are the two key theories which are considered to provide explanations regarding an individual's perceived unfairness as to the allocation of his or her resources, the rules followed and the way he or she is treated during this process, after comparing him or herself to other colleagues.

Argyris's (1960) psychological contract theory, Herzberg's (1987) dual-factor theory of motivation and Vroom's (1964) expectancy theory deal with specific interrelated issues such as that of false expectations about job-related promises, job dissatisfaction and differences in workers' and employers' expectations of the employment relationship.

Overall, there is a consensus between these theories as they are all interrelated and focus on the notion of 'justice' or 'equity'. If individuals perceive or expect to see their wages different from that of others or to be treated unfairly in relation to the process by which things are done, then it is possible for a conflict to occur in the workplace. For that reasons, in almost all theories, much attention has been paid to those factors which motivate or de-motivate them at work.

Social comparison theory

Social categorisation *per se* is sufficient for discrimination between workers. Individuals are normally driven by the need for self-advancement and adoption of the same status as their comparison target.[20] Thus, any negative subjective evaluation of an employee's self, abilities or opinions, which may arise from comparisons with others of the same or different gender and/or from comparisons of employees' performance with other jobs held either in the same or different organisation/s, can cause workplace conflicts. Moreover, it may lead to the employee quitting a job, performing with less

[20] Jones and Gerald (1967) used the term 'co-oriented peer'.

effort and motivation, and feeling distressed, ultimately creating a hostile environment in the workplace.

Suls and Wheeler (2000, p.15) have described social comparison as "a core aspect of human experience" and Hogg (2001) defined it as "a pervasive and fundamental feature of group life" (in Leary and Tangney, 2005, p.344). Generally speaking, the purpose of these comparisons is to generate accurate evaluations of beliefs, opinions, actions, emotions and abilities. As a consequence, a good evaluation would result when the positions of individuals are fairly close to one another, avoiding a possible workplace conflict in this way.

There are two key social comparison processes: the *reflected appraisal*, in which evaluations of the self are derived from the interactions between the evaluation seeker, who is sensitive to the judgements of the evaluator on whom he or she is dependent, and the evaluator, who is in the position to reassure the correctness of values; and the *comparative appraisal*, in which the evaluator does not have to be aware that he or she is used as a reference person because his or her observable behaviour can act as a reference point for someone else (Jones and Gerard, 1967, p.324; Moschis, 1976).

Based on Festinger's theory on social comparison processes (1954) and the origin of Akerlof's (1982) investigation, it can be argued that there is a *drive* within individuals to evaluate the correctness of opinions, desires and beliefs or to predict future performance based on the grounds of reciprocity. This is achieved by looking (intentionally or not) at outside images and comparing themselves (and especially their wages) with others who are similar in the dimension being compared, in the absence of objective standards and with reference to the physical or social reality (Goethals, 1986; Hasan, 1997; Meisel, 1986; Suls *et al.*, 2002).

More specifically, there is always an *upward drive* towards achieving greater abilities (Festinger, 1954). 'Distance' from the mode of the comparison group is a crucial factor to take into account as it affects the tendencies of those who compare themselves to others. Only individuals who are close to each other could have stronger tendencies to change, in contrast to those who are further away. When there are differences of opinion, there will be a tendency to change oneself to move closer to others or try to change others to be more like oneself. It is more difficult for this to happen in the case

of abilities, where individuals do not tend to compare themselves with others who are too different from themselves (in ability), but choose those who are most like themselves for comparison. For this reason, individuals tend to move in groups of those with similar opinions and abilities and desert groups that fail to satisfy their drive for self-evaluation. Thus, it is understandable that comparisons and competition between groups cease when individuals realise that their targets have become incomparable.

It has also been noticed that when individuals' self-esteem is raised due to some perceived inadequacy in others (*downward comparison*), then it is possible to bring to an end any social comparison (Reis *et al*., 1993). The integration of the attribution and social comparison theory by Goethals and Darley (1977) filled the gap in Festinger's theory regarding the ways in which individuals seek to attribute comparison with the behaviour of others and gain knowledge of their traits, background, and general worldview (Jones, 1987; Pennington, 2000; Baron and Byrne, 2007). Studies have shown that individuals are likely to compare their rewards with the rewards of others of the same gender as well as their outcomes with other colleagues of the same profession (Major and Testa, 1989). Additionally, according to Wills's (1981) downward comparison theory, individuals who are under threat are more likely to compare with others who are less competent to restore their own self-confidence. On the other hand, Taylor and Lobel (1989) contended that this group of individuals would rather interact with those who are doing better than them with the intention of becoming more inspired and motivated.

In summary, social comparison is not always a problem as some individuals take advantage of peer evaluations by taking inspiration from the efficiency and efforts of others (in terms of job outcome) or their higher status/positions (judged by their rewards). However, there are some others who become less motivated when seeing others' satisfactory performance at work. It is certain that the negative evaluations of an individual obstruct the establishment of good employment relations by giving rise to unavoidable conflict situations.

Consequently, it seems that all individuals are inevitably engaged in several (sub) processes in the workplace such as that of social comparison with other individuals or social groups. Their behaviour, opinions and beliefs, their isolation or inclusion in these

social settings are determined by their perceptions as to the correctness of their own performance and attitude. Their beliefs in this regard are shaped through their constant social interaction with others and depend on their tendencies towards cooperation and competition, their socioeconomic background as well as the environmental conditions.

Equity theory

In an organisational environment, a conflict can arise from a powerful motivating force, the 'perceived unfairness' in relation to the rewards that do not meet employee's expectations or are disproportionate to their performance at work, and to the rewards received by other employees with whom they make comparisons. Additionally, a conflict might occur when it is perceived that the process and/or rules in the allocation of scarce resources are unfair and wrong (further details are discussed below under the terms of distributive, procedural and interactional justice).

Fairness is entirely a matter of perception as there are no objective standards for it. For instance, some theorists may agree that fairness connects to employment opportunities, labour practices, or the treatment of employees, while others may have the opposite opinion. This is because these are social norms which constantly change. Hence, it is understandable that anything contradicting fairness may evoke social conflicts in the workplace.

In particular, Adams (1965) tried to explain relational satisfaction in terms of perceptions of fair or unfair distributions of resources within interpersonal relationships, referring to the concept of *distributive justice* (1) which, together with the procedural and interactional justice (see below), constitute the core concepts of this study, as they exist in society and not just in the organisations (for example, organisational justice).

According to the equity theory (Figure 3.4), which has similarities to the social comparison theory, individuals are engaged in a social and interpersonal comparison

between the distribution of their *inputs,*[21] what they have put into work and their *outputs,*[22] how they are rewarded.

The equity theory originated with Aristotle (384-322 BC), who claimed that equity or 'justice' is achieved through proportionality, which is the 'equality of ratios'. More specifically, the concept of 'equity' implies the distribution of pay and rewards in accordance with employees' contribution and performance; this should result in a ratio of one individual's outcomes to inputs equal to another individual's outcomes to inputs (Daft, 2007; Pride *et al*., 2014). Again, in this case, the ratio cannot be tested objectively. Hence, it appears that in both theories so far (the equity and the social comparison theory), the ideal of comparing the rewards is central.

In more detail, this happens to explore individuals' reactions in so far as how fairly they are treated and the (positive or negative) impact on production compared with certain reference persons or groups. An individual considers that he or she is treated fairly only when he or she perceives the ratio of his or her inputs to his/her outputs to be equivalent to those around him or her ('feeling of equity'). The general aim of this theory is to achieve a balance between employees' inputs and outputs in a way that seems equal in the eyes of those involved so as to ensure that they are contented and motivated. As a great extent of the research has been conducted in laboratory settings, it has questionable applicability to real world situations (Huseman *et al*., 1987).

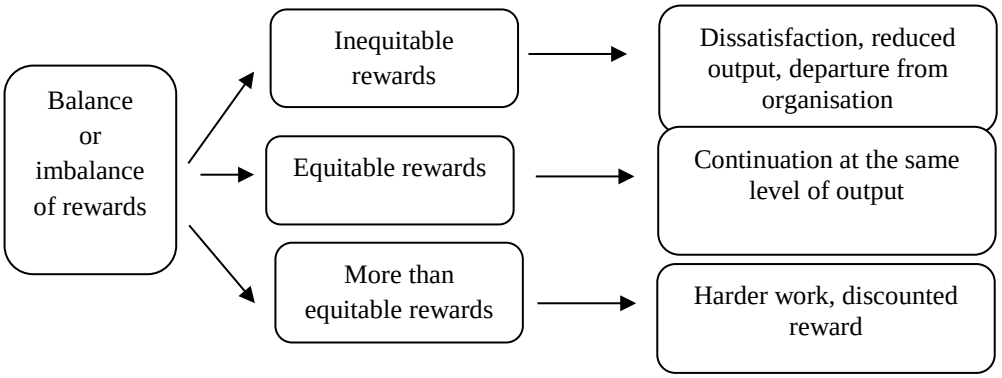

Figure 3.4: Equity theory (Source: Koontz and Weihrich 2006, p.296)

Moreover, the concept of *procedural justice* (2) is as important as that of distributive justice. It refers to the process by which things are done following the rules of equality

[21] i.e. effort, knowledge, skill, time, experience, social status, amount of responsibility, ethnic background

[22] i.e. salary, promotion, recognition, benefits, monotony, poor working conditions

(i.e. to preserve social harmony), equity (i.e. to achieve productivity) or need (i.e. to foster personal welfare), regarding the allocation of resources, the procedures, and the rules followed to reach a decision (Collins and O'Rourke, 2008; Greenberg, 1987; Folger and Greenberg, 1985; Leventhal, 1976). Hence, the presence of unfair procedural rules at work is another factor which can lead to conflicts.

In addition to the above, Leventhal (1980, p.29, p.35) defined distributive justice as "judgments of fair distribution of benefits and burdens, irrespective of whether the criterion of justice is based on needs, equality, contributions or a combination of these factors"; he also defined procedural justice as "an individual's perception of the fairness of the procedural components of the social system that regulates the allocative process".

A third type of justice, 'interactional justice' (3) was also identified, though there is no consensus on this among organisational behaviour theorists. Bies and Moag (1986) defined it as the form of justice responsible for the quality of interpersonal treatment that individuals receive during the enactment of organisational procedures (Figure 3.5). In particular, in conflict situations, an employee is not only interested in the fair distribution of his or her salary and other benefits, but also about his or her relationship with others. The employee does not like being over benefited/overcompensated, namely his/her rewards are perceived as higher, when the same or less effort is made by another person. Similarly, he or she does not like being underbenefited/undercompensated.

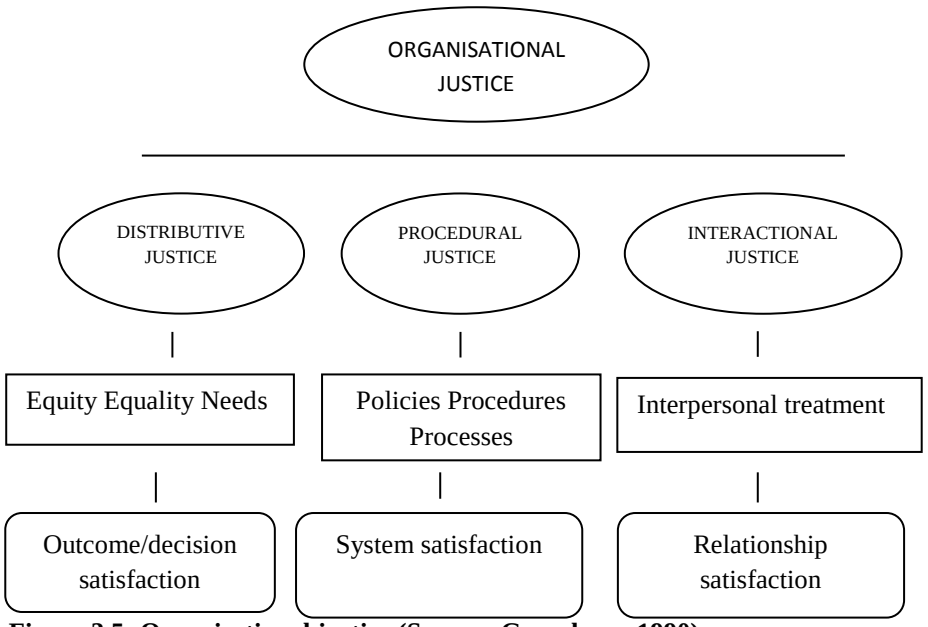

Figure 3.5: Organisational justice (Source: Greenberg, 1990)

However, in practice, this theory is demonstrated when comparisons are made between the wages of an individual and that of another or others, known as *referents*. These are the critical determinants of inequity who might be a compilation of a broad class of relevant others and could work in different departments of the same or other organisations (Campbell and Prichard, 1976; Cosier and Dalton, 1983). For that reason, two types of equity perspective are identified: *internal equity,* when we discuss pay comparison between dissimilar jobs in the same organisation; and *external equity*, when we discuss pay comparison between dissimilar jobs in other organisations (Werner and Neal, 1999; Jones *et al*., 1991; Akerlof, 1982). Therefore, it appears that employees' willingness to maintain any business relationship mainly depends on the way that rewards are distributed (Mukherjee, 2009).

In addition to the above, based on Akerlof's (1982) model of gift exchange in the labour contract, wages are seen in relation to the employees' efforts and may, if they are high enough, constitute mutually reciprocal gifts. *Reciprocity* is, in this context, a situation where an individual compares and values the fair or hostile intentions of the other relevant employees and acts accordingly (Rabin, 1993; Fehr and Falk, 2002). The employer pays higher wages *ex ante* in exchange for a higher effort *ex post* by motivating "workers to provide higher effort, even though they anticipate no *ex post* reward for doing so" (Hannan, 2005, p.169*)*.

More specifically, according to Akerlof (1982 cited in Pierre and Andre (2004)), from the employee's perspective, gift-giving consists of exceeding prevailing work standards in exchange for which the employer pays him/her a wage in excess of the so-called 'reference' wage. From the employer's perspective, this can be viewed as an excess remuneration or leniency of work rules, a wage that is fair in terms of the norms of this gift giving. Based on sociological grounds (namely, social norms which are established from comparisons between the referents), Akerlof (1982, 1984) was of the opinion that this is the result of the employee's tendency to develop feelings of loyalty towards their organisation. Thus, any gift of extra effort to the organisation would also give the employee satisfaction and improved morale. Nevertheless, this happens because the employees feel that they are fairly treated by their employers as to their wage[23] (Kocher

[23] In relation to this, there are two additional forms of equity: a) *horizontal* equity, which "is exhibited by rewarding those of equal worth to an organisation equally", and b) *vertical* equity, which "is exhibited by

et al., 2012). This is judged in relation to the wages paid to other co-workers through social comparison (Frank, 1984).

In other words, workers "proportionately withdraw their effort as their actual wage falls short of their fair wage" (Akerlof and Yellen, 1990, p.255). As a result, the employers solve the conversion problem because "the worker does not strictly give his or her labour as a gift to the employer, but he or she expects a wage in return" (Gneezy, 2002, p.2). Thus, they take advantage of Akerlof's model as they increase the organisation's productivity (based on positive reciprocity), by encouraging the worker to work harder. The increased labour productivity pays for the higher wages. Consequently, it can be said that equity influences the formation of wages since employees' behaviour depends on these comparisons (Bewley, 1998; Blinder and Choi, 1990; Campbell and Kamlani, 1997). Moreover, by the same logic, this type of behaviour is likely to be successful in reducing or completely avoiding conflict.

Overall, equity is perceived by some not just as a justice criterion but as being synonymous with the justice of the outcomes (Weiner *et al*., 2003). An employee will always seek (social) equity, namely, anything of value earned through investing something of value (Romanoff *et al.*, 1986) which does not negatively affect his or her behaviour and performance as long as he or she feels satisfied with his or her equitable outcomes. Thus, fairness/equity can be linked to other factors such as work satisfaction, perceived legitimacy of the authorities and task performance.

On the other hand, an undesirable outcome would entail negative feelings such as discomfort, unhappiness or a sense of injustice and inequity. These social comparisons create some sort of tension in business relationships and result in employees drawing misleading conclusions and perceiving non-existent inequities. The magnitude of perceived inequity determines the level of distress and (de)motivation as well as of (dis)satisfaction or absenteeism. Walster *et al*. (1978) proposed two possible forms of inequity restoration: restoring 'actual equity', which requires "true modifications to one's or another's outcomes and/or inputs" (in the case of underpaid employees, where they attempt to raise their rewards); and restoring 'psychological equity', which

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rewarding people of greater worth to an organisation more generously than those of less worth to the organisation" (Tierney, 1999, p.135).

"involves cognitively distorting reality in a manner that restores equity" (in the case of overpaid employees, where they retain their rewards) (in Greenberg and Colquitt, 2005, pp.18-19).

Compared to Festinger's theory, which focuses only on the negative evaluations of the self which derive from comparisons with peers, Adam's theory also refers to those comparisons which are also made between the distribution of an individual's inputs and his/her outputs, rather than with that of another individual.

Lastly, three further causes of conflict have been identified in the individual context: false expectations about promised obligations at work; job dissatisfaction; and differences in workers' and employers' expectations of the employment relationship.

Psychological contract theory

In general terms, a psychological contract is an unwritten, reciprocal exchange agreement between the employer and the employee who freely participates in it. More specifically, it is formed as a result of implicit or explicit promises made between them (for example, career opportunities) and concerns beliefs held by an employee and their employer about what they expect of one another. It is conditioned by the social expectations and views of what is fair, regarding salary, training, job security, workload, opportunity for growth, and dignity at work (Argyris, 1960; Levinson *et al*., 1962; Rousseau, 1995; Schein, 1965; Dabos and Russeau, 2004; Miles, 2012). Therefore, the theory of psychological contract shares the 'perceived injustice' factor with equity theory. Moreover, it is akin to the latter theory as it considers the individual's perception of reciprocal contributions between his or her employer (Rousseau, 1995).

The psychological contracts can be: *transactional* (i.e. focus on highly economic exchanges; contracts are *normally* short term in duration with well specified performance terms); *relational* (i.e. focus on long term economic and socioeconomic exchanges with ambiguous terms); *balanced* (i.e. long term and open ended with well specified performance terms; or *transitional* (i.e. short term contracts with no explicit performance demands) (Robinson and Rousseau, 1994).

Some scholars believe that the idiosyncratic nature of the psychological contract means that some expectations held by one party cannot be shared by another, due to different

interpretations and the ambiguity of assumed [high or low level] obligations (Rousseau, 1995; Rousseau and Tijoriwala, 1998; De Jong *et al*., 2009). On the other hand, there are other scholars who believe that some expectations are widely shared (Levinson, 1962).

Hence, a psychological contract is violated when one party is aware of the fact that the other has failed to fulfil the promised obligations comprising that contract. Such a contract breach entails feelings of betrayal, a sense of injustice and anger that result from the individual's perception that the other party has not kept his or her promises, but it also creates feeling of inequality in the employment relationship. Thus, this is a possible cause of individual workplace conflict. Therefore, the hope to meet the mutual expectations is seen for both parties as a motivation to continue in the employment relationship (Levinson, 1962). The higher the amount of mutual obligations, the stronger the social relationship between the employer and employee will be (Shore and Shore, 1995).

Within the same line of thinking, Cullinane and Dundon (2006) questioned the legitimacy of the term 'contract' because of the fact that a psychological contract is better regarded as 'a social exchange interaction', given the unequal power relationship between the employer and the employee, and its implications for how unvoiced expectations are supposed to be understood. Furthermore, they believed that one ignored issue was that of mixed messages or poorly communicated expectations from the employers; the problem that arises is not that the employers fail to keep their promises (because they are prevented due to market pressures and economic changes), but how and why the workers perceive that the employers fail to keep them. Hence, it is a matter of divergent and not mutual expectations. Furthermore, they also pointed out that the design of the employment relationship under capitalism and the powerful sources of influences from structural factors are not considered. Thus, they concluded that workers' social expectations may not be met due to globalisation, the force of deregulation and so on, rather than the management's fault. For that reason, it is suggested that the messages that the workers receive should be interpreted on a post-structural, cultural and socio-political basis (Cullinane and Dundon, 2006).

Job dissatisfaction is another cause of workplace conflict and is discussed below.

Dual factor theory of motivation

According to Herzberg (1987), the factors which lead to job satisfaction, known as the motivator or intrinsic or job content[24] factors, are different from those which lead to job dissatisfaction,[25] the so-called hygiene or extrinsic or organisational 'content' factors. Satisfaction and dissatisfaction cannot be measured on the same continuum; meeting the latter type of job factors would not motivate individuals at work or increase their performance, but it would help in removing their dissatisfaction. Therefore, the intrinsic factors contribute to the workers' level of job satisfaction by providing responsibilities that can help them in acquiring interest in their jobs, dependent on their outcomes and the experiences they gained (Robbins, 2009).

Lastly, it is also useful to refer to Vroom's expectancy theory of motivation which identifies the differences in employees' and employers' expectations of the employment relationship as an individual workplace conflict. Following this, a summary of the most relevant theoretical models that have been discussed so far (see Table 3.3 below) and a conceptualisation of the origins of workplace conflicts (Figure 3.6) are also provided.

Expectancy theory

Vroom's (1964) expectancy theory is a process theory which deals with the process of motivation and is concerned with 'how' motivation occurs in the workplace, compared to Herzberg's theory which explores 'what' motivates workers (content theory). Therefore, the former theory is similar to equity theory in relation to this aspect. Particularly, it examines work motivation through individual's understanding and perception (i.e. belief and expectation) that his or her effort will positively influence his or her performance and bring the desired outcomes (action-outcome relationship) (Borkowski, 2011).

According to Vroom (1964, p.17), expectancy is defined as "a momentary belief concerning the likelihood that a particular act will be followed by a particular outcome. Expectancies may be described in terms of their strength". Hence, workers need to be confident that they have the ability to perform a certain task, after calculating the costs

[24] i.e. recognition, the work itself, advancement
[25] i.e. pay, job security, working conditions

and benefits. Other motivational theories such as the dual-factor theory focus on the relationship between individual's needs and effort (Lunerburg, 2011).

More specifically, an individual's motivation is determined by the expected outcome of their performance, only if they are confident that:

- "their effort will lead to acceptable performance (expectancy)
- performance will be rewarded (instrumentality) and
- the value of the rewards is highly positive (valence)" (Lunerburg, 2011, p.2; Koontz and Weihrich, 2006; Condrey, 2010).

Therefore, if one of the three cognitive variables is equal to zero, then the level of motivation will be zero, meaning that the person is indifferent in achieving a certain goal (i.e. Motivation = Expectancy x Instrumentality x Valence) (Figure 3.6).

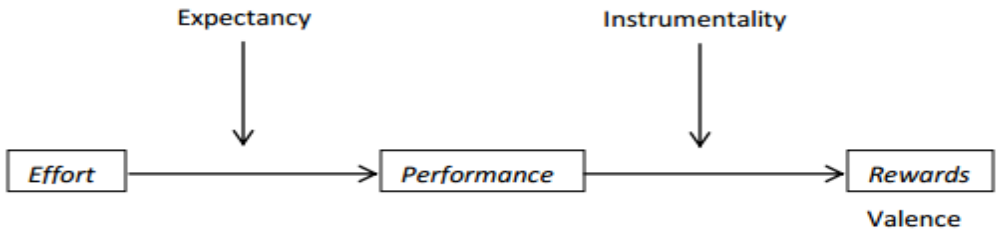

Figure 3.6: Expectancy model (Source: Lunerburg, 2011, p.2)

From the management's perspective, this theory assists in understanding an individual's behaviour and motivation. It implies its continuous attempt to implement the most by thinking of meaningful rewards/incentives for workers, clarifying people's expectancies and minimising unpleasant outcomes (Mukherjee, 2009). Thus, the absence of such considerations will demotivate them at work.

To sum up, workplace conflicts, which are the primary concern of this study, are caused by various factors which are mainly related to social inequities and perceived injustices. Negative conclusions deriving from comparisons with peers at work, especially on wage grounds (as to whether they perceive their wage to be fair in relation to that of others), affect an individual's overall evaluation of his or her self and lead to further conflict (social approach). A worker's judgement depends on whether there is distributive, procedural or interactional justice (socio-psychological approach). Thus, fairness, together with reciprocity, is a significant factor. Additional factors are the violation of psychological contracts at work, job dissatisfaction and differences in employees' and employers' expectations of the employment relationship. Overall, all

the above analysed at individual level theories are interrelated. However, it appears that their common characteristic is that individuals mainly focus on wage comparisons or have a feeling of dissatisfaction or injustice about their salary.

Below, Table 3.3 summarises the most relevant works that have been employed in this research. A variety of models that theoretically explains the grounds of the occurrence of employment conflicts has been discussed.

Table 3.3: Synopsis of causes of conflicts in employment relations (Source: Author)

THEORETICAL FRAMEWORKS ON CAUSES OF CONFLICTS			
FUNDAMENTALS	Smith (1776)	Theory of market	Wage differences
	Marx (1848)	Conflict theory-Social class theory	Class differences
	Weber (1978)	Social stratification theory	Economic, political, social prestige inequalities
COLLECTIVE LEVEL	Mayo (1946)	Interpersonal relations theory	Violation of labour's emotional needs and the non-fulfilment of environmental conditions
	Edwards (1986)	Industrial relations theory	Differences over the use of labour power
	Rex (1983)	Theory of race relations	Exploitation of labour power on racial and ethnicity grounds
	Connell (1987)	Social theory of gender	Awareness of economic, political, social subordination on gender grounds
	Hofstede (1984)	Cultural dimensions theory	Absence of cultural awareness
INDIVIDUAL LEVEL	Festinger (1954)	Social comparison theory	Negative evaluations of opinions, feelings, abilities and beliefs arisen from social comparisons with others
	Adams (1965)	Equity theory	Perceived unfairness regarding the allocation of resources, the rules of the allocation process and the way individuals are treated during the process
	Argyris (1960)	Psychological contract theory	False expectations about promised obligations at work
	Herzberg (1987)	Dual-factor theory of motivation	Job dissatisfaction
	Vroom (1964)	Expectancy theory	Differences in workers' and employers' expectations of the employment relationship/Absence of work motivation

Based on the above synopsis, a model has also been conceptualised to provide taxonomy of the above discussed causes of workplace conflicts (Figure 3.7).

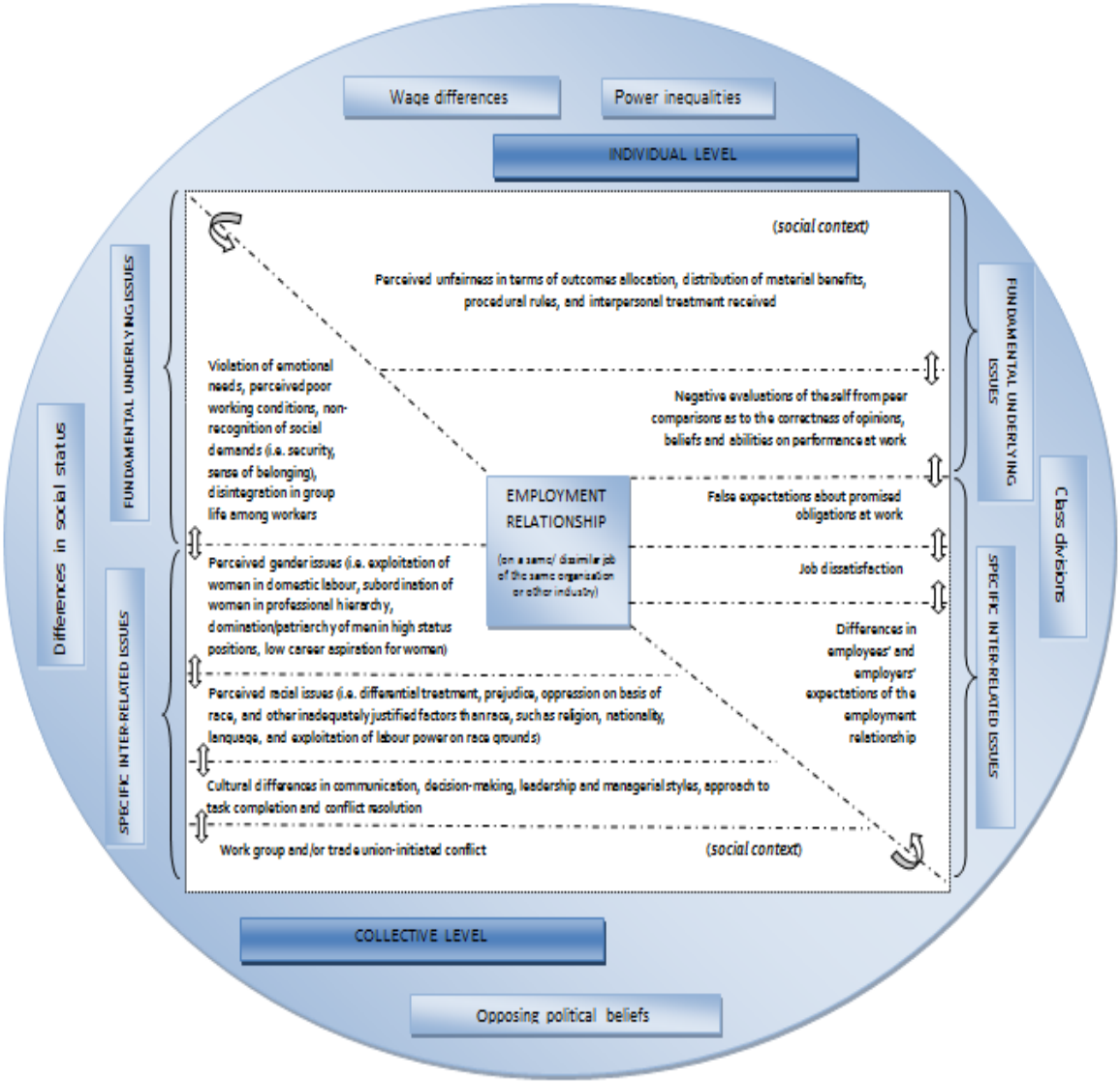

Figure 3.7: Conceptual model of the origins of employment conflicts (Source:Author)

According to the above figure, asymmetric employment relationships (s.2.2) lie at the heart of the conceptual model of the origins of employment conflicts, by representing the opposing interests of all actors (employers, workers, TUs) involved in a conflict, when they are in the same or another organisation (industrial relations theory).

It is also clear that the identified sources of employment conflicts are hierarchically categorised into fundamental and specific interrelated issues.

At the left side of the diagram, the key sources of conflicts that arise at the collective level are presented. On the top, the non-logical side of workers' is denoted as an issue of major importance; this is because it reveals the human side and psychology of all employees who belong in an organisation; when their emotional needs are violated, their social demands are not recognised as well as when the workplace environmental conditions are contrary to their expectations (s.3.1). In a closer social context, other specific, interrelated issues are also discerned such as the perceived discrimination between the two sexes, namely, when women are subordinated in professional hierarchy or exploited in domestic labour and men appear to dominate in high positions (s.2.2). Additionally, employment conflicts may arise due to perceived racial issues (for example, different treatment, harassment or oppression in terms of skin colour, religion, nationality and language) (s.2.2). Finally, collective conflicts may arise from cultural differences in communication, decision-making (s.2.2) or from the workgroup and/or TUs.

Individual conflicts are presented on the right of the diagram. Two are the most fundamental underlying issues: the perceived unfairness in terms of outcomes allocation, distribution of material benefits, procedural rules and interpersonal treatment received (either internal to an organisation or external to it); and the negative evaluations from comparisons between employees' in terms of their positions, abilities, opinions and actions (s.3.1). The false expectations about promised obligations at work (psychological contact theory), job dissatisfaction and differences in employees' and employers' expectations of the employment relationship follow the above related issues that also occur under the individual context (s.3.1).

In all cases, conflicts at both levels are interrelated, as it appears in the figure. Workers may join an organisation as individuals, but they work and collaborate with others in groups (workgroups) (as discussed in Chapter 4).

3.2 Conclusions

Research has shown that conflict is rooted neither in psychology nor in 'lack of communication', but is more complex and opaque as it is socially determined. The theories suggest that when collective and individual conflicts are examined more closely, they always occur in a social context (as discussed both in Chapters 2 and 3). Although the occurrence of conflicts may be manifested as an individual problem, it is a socially-constructed process.

In workplace communities, conflict can arise through social interaction between individuals, depending on the expressed interests and desires of each employee. Hence, none of the theories (either at the collective or individual level), which are all interrelated, will be excluded in the current research as all contribute to notions central to this study.

Consequently, now that the sources of workplace conflicts are identified, the next aim is to find out how workers can ideally resolve their grievances with management in the workplace when they are together with their co-workers. This can be done through the critical evaluation of important concepts that arise within the context of the workplace (s.4.1) as well as of the existing voice mechanisms and processes (s.4.2) to see what brings workers to the ETs. This is a method to get a much fuller and more realistic picture of what is going on from a worker's viewpoint. This is an essential background to the ET situation.

Chapter 4: RESOLUTION OF WORKER GRIEVANCES: OPTIMAL CONDITIONS FROM WORKERS' VIEWPOINTS

The previous chapter concluded that individual workplace conflicts have social origins as collective conflicts (Chapter 2). It illustrated that individual conflicts arise because of environmental grounds, or perceived unfairness in terms of salary, promotion or other benefits, partly through comparison with peers/referents or because of false expectations about promised obligations at work, or job dissatisfaction.

This chapter identifies optimal conditions from workers' viewpoints in the resolution of their workplace grievances with management. There is also discussion on the continual decline in workers' and unions' collective power that has been observed during the last fifty years as well as its causes, which have given rise to the increased use of ETs. Given the growing internationalisation of economies, the role of global unions at international level is also considerably examined.

4.1 Work groups

Since the optimal workplace conditions in the resolution of worker grievances need to be identified, the first sections refer to the role of work groups and their voice, known as the union voice (s.4.1-4.1.1). After focusing on their main needs at work, it is also discussed which of all available employee institutions work best for them when a dispute arises (s.4.2). At the end of the chapter, the optimal conditions from workers' viewpoint that can ideally occur when work groups take action are concentrated (Figure 4.8). It is also explained why their (unions) power has recently been declined (s.4.3).

Work is a collective process since events throw 'unconnected' individuals together in groups by giving them a reason to interact, to coordinate their activities and to act collectively (Wheelam, 2005). Work groups are situations where work is done and where individuals discuss issues and identify with each other. Through sharing different experiences, skills and knowledge, work groups hold the potential to achieve more than the individual alone (common aims) (Mink *et al*., 1987). For the work group to be effective, its members must be united and the work group should effectively perform some tasks (Turner, 2001). Those groups are the basis for collective problem definition and action. For that reason, it is important to closely examine in this chapter what

happens when workers all decide to act together whenever a dispute arises from the employment relationship.

The divergence of material, emotional or other interests between the employers and the employees is the most fundamental phenomenon in workplace relations. Nevertheless, it is better for workers to act in alliances, rather than taking up issues individually, because they share group membership benefits (i.e. the feeling of being protected, united and recognised, collaboration). As a result, it is more feasible to protect their shared interests and goals.

Thus, one of the consequences of group cohesion is the feeling of security, the sense of contributing to the group's vitality and potency (Cartwright, 1968, pp.91-92; Festinger *et al*., 1950).

In his major work '*Social problems of an industrial civilization'*, Mayo (1975, p.9) claimed that "every social group had to secure for its individual and group membership the satisfaction of material and economic needs and, most importantly, the maintenance of 'spontaneous or voluntary cooperation' throughout the organisation".

Mayo's two main assumptions are that:

> *1) most men are compelled by their nature to seek social alliances and productive cooperation with each other and 2) appropriate alterations in the individuals' current environment can foster improved mental health and individual satisfactions as well as calling forth more productive cooperation between individuals and between groups to which they feel affiliated.* (Sarachek, 1968, p.189)

The theory is used here to explain how workers may be supported in conflict through broadly similar mechanisms.

Overall, it appears that work groups have greater chances to support the worker involved in a dispute and protect the individual from victimisation when raising a grievance. As such, if work groups seem to be more efficient in achieving dispute settlements, then it is also necessary to look at the role and power of the collective voice, and the extent of union voice.

The role of voice in work groups

Whenever workers face problems, they have the opportunity to voice their concerns to their employers and attempt to reach a favourable solution. Nonetheless, there are some issues that need to be considered first. In this phase, voice needs to be considered in

association with various other factors such as employees' loyalty, commitment, approachability and satisfaction at work as well as management's responsiveness. At the end of this section, it will be concluded whether these conditions can result in an ideal communication on a dispute.

Hence, before any analysis, it is necessary to explain the meaning of 'voice'. Hirschman (1970, p.30) defines voice as "any attempt at all to change rather than to escape from an objectionable state of affairs...". This means that voice can be either an individual or a collective effort (Hirschman, 1970). When referring to voice, various means of communication are implied with the intention of improving the perceived conflict situation, instead of 'exiting'/withdrawing from the employment relationship (Gleason, 1997; Addison and Belfield, 2004; Freeman, 1976; Dowding and John, 2012).

Collective voice seems to have greater power than individual voice. This is because there are fewer possibilities for workers to be victimised (Harcourt *et al*., 2004), more chances to mobilise collectively to support their interests, and less need to follow the 'exit' choice. According to Colvin (2004), greater work group participation in the resolution of worker grievance processes is associated with reduced workplace conflict. Consequently, workers may influence the voice mechanisms (direct, indirect, union, non-union, mixed/hybrid).

Various scholars have identified different types of voice which workers may follow to express and negotiate their problems. Luchak (2003, p.118) distinguishes two types of collective voice channels: *direct voice* when employees try to communicate any change through a two-way communication with another member of the organisation (team briefing, quality circles, 'town hall' meetings, self-directed teams, problem solving groups, appraisal systems); and *representative voice* which occurs when employees indirectly communicate through a third-party representative (for example, union steward, joint consultative committee, works council).

In the former case, workers may be engaged in management-organised voice practices that are not initiated by them, but management normally seek to restrict their influence and involvement in more detailed discussions. In the latter, voice practices are initiated by workers or employee representatives and channelled by management. It may seem that the former case is the most optimal for workers in a way that they can directly

communicate their concerns to management without the interference of other people (Kim *et al*., 2010; Beale, 1994; Frost, 2000). However, direct voice gives workers no protection (i.e. they are vulnerable to victimisation and blacklisting, less confident in addressing all issues that arise, and there are more chances of being ignored). Therefore, any advocacy assistance from skilful and experienced representatives is vital.

Essentially, it is necessary at this moment to examine the results of those studies that link voice with some factors which might positively or negatively influence the outcome in a resolution of worker grievances procedure. Research has revealed two significant factors. In particular, Saunders *et al*. (1992, p.255) argued that *management's responsiveness* (to employee voice) and *approachability* are the most important predictors of employee voice. Consequently, it matters whether management is willing to listen to employees' complaints and handle the issues, and whether employees are encouraged to raise the issues. In the latter case (approachability), workers decide whether to raise an issue considering the benefits and costs of doing so, and their past experiences at work

In relation to workers' experiences at work, Boroff and Lewin (1997), who conducted a survey in a non-union organisation, showed that loyal employees who had faced bad experiences at work 'preferred' to remain in silence because they see no possibility of success but every possibility of victimisation. Unquestionably, this alternative brings no solution to any problem. It generally raises the levels of employee turnover (Croucher *et al.*, 2011). Hirschman (1970) found that employees who were *loyal* and *satisfied with their work* tended to voice any problem. More specifically, it was shown that workers who are emotionally attached to the organisation[26] they work for prefer to use direct voice to representative voice and settle their disputes quietly (Luchak, 2003). *Continuance commitment* is linked with a more rational approach in which employees calculate the costs and benefits of staying or leaving the organisation, while *normative commitment* is linked to one's general sense of obligation to the organisation (Meyer and Allen, 1997).

Finally, regarding management's responsiveness, it is important to note that neither direct nor indirect voice will have any effect if management 'obstructs' this

[26] This is known as *affective commitment.*

communication by not listening, responding or dealing with employees' issues. Therefore, it is understandable that management influences optimal forms of voice. In that case, only mobilisation or stopping the productive process will influence them. Under law, management has very considerable power to determine what occurs at work in all economic systems. For that reason, it is essential for management to show understanding and cooperate with its employees, if optimal solutions are to be achieved. Thus, it appears that commitment (loyalty) and satisfaction (as discussed earlier above) at work would encourage workers to voice their complaints and problems. However, if management is unresponsive, mobilisation is needed; that can only happen in work and not in a court or tribunal.

This far, it is well understood that dedicated and 'satisfied with their work' employees prioritise their need to improve their employment relations and negotiate their interests at an initial stage, whilst 'less satisfied at work' employees may seem more reluctant even to communicate the likely problem to management. It appears that the settlement of employment disputes requires close relations between management and employees, but not necessarily a direct contact with management. Hence, representative voice channels (as discussed at the beginning of the section) may be preferable in the latter case. Therefore, it can be concluded that despite the fact that workers who are satisfied, confident and emotionally attached to their work may sometimes show a preference for the 'direct voice' form, it is impossible to accept that 'indirect voice' form is not required in the resolution of worker grievance processes. It has been shown that this is another alternative way to express disputes. Thus, it can be argued that ideally, an effective communication on a dispute takes place when collective voice is positively linked with loyalty and satisfaction at work. This position does not involve all types of employee (i.e. less satisfied or loyal). It also assumes that happiness at work is a fixed state that does not change.

Hence, it is generally understood that an ideal communication on a dispute will involve the following conditions: collective voice, employers' approachability, management's responsiveness, loyalty, and satisfaction at work. Nevertheless, it would be optimal for workers to voice their complaints to management without any hesitation, irrespective of whether management listens and deals with their issues or whether they are loyal or satisfied or with good or bad experiences at work. Therefore, management's central role interacts with workers' concerns: this is a relationship and not something solely

determined by either side. Thus, even outside normal procedures, outcomes will be negotiated.

Since collective voice is regarded an important condition for an optimal resolution for worker grievances, the following sections will examine its advantages and the factors which ensure union effectiveness.

4.1.1 Union voice

According to Freeman (1976, p.364), the main advantages of *union voice* are threefold:

> *a) it offers a direct communication channel between workers and the organisation, b) it presents an alternative mode of expressing discontent other than quitting with attendant benefits in the organisation of reduced turnover costs and greater training and c) it constitutes a necessary modification of the social relations of production.*

To examine the necessity of union voice in the resolution of worker grievances, it is vital to identify its role and the optimal conditions under which it becomes effective from the workers' viewpoint. It is clear from the above definition that unions benefit workers as this is one way to voice their workplace concerns.

However, the literature has shown that union effectiveness (i.e. in bargaining, in organising) relies mainly on the determinative factors of collective participation in unions and collective mobilisation (Likert, 1961; Lawler, 1986; Kelly, 1998; Fuller and Hester, 2007; Croucher and Cotton, 2009; Paquet and Bergeron, 1996) (detailed analysis follows below). It is these factors which ensure that unions do not simply move away from workers' concerns to become bureaucratic organisations. Hence, the sections that follow discuss workers' major needs for representation and mobilisation.

Workers' need for opportunity for representation

Within legal systems, people have the right of representation which is not always present at work. Particularly, in traditional trial practice, disputants, according to legal provisions and principles (for example, equality, equity, right to a fair trial, access to justice), are entitled to seek lawyers' help to legally represent them in civil and criminal proceedings, through the presentation of the strongest arguments to convince the judge for a favourable decision and attribution of justice (Abramson, 2004). According to Article 7 of the Universal Declaration of Human Rights (UDHR) of 1948:

> *all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*

Such rules and principles that serve as a societal, legal framework and derive from social interactions (thus socially-produced) seek to ensure that all individuals are not unjustly treated, more favoured or disadvantaged in relation to others in the occurrence of a dispute. More specifically, lawyers in turn have to pursue their clients' personal interests and assist them, based on their expertise, experience and knowledge of law.

However, any legal action is the absolute last resort for workers (relative discussion follows in Chapter 6) and is normally followed when any of the non-legal workplace representation is unsuccessful. Unfortunately, if workers reach this stage, they have to engage with complex, time-consuming and lengthy legal procedures which entail high costs. Most importantly, they are normally represented individually; thus, the individual worker (details about their categorisation follows below) needs to pursue the process alone (Budd and Colvin, 2008), and struggle against a powerful organisation which is anxious to protect its reputation and can afford the expense of doing so (Collins and O'Rourke, 2008). They are obliged to act under pressure and agitation in a hostile, antagonistic and unknown legal environment. Furthermore, the difficulty of understanding the complicated legal paperwork due to its strictly legal terminology (Roberts and Palmers, 2005) and the absence of trust in the assistance of a legal advocate previously unknown to the worker (Lewis and Sargeant, 2004) either discourage them from focusing on the main cause of conflict or force them to withdraw from their position at their own expense.

Therefore, in all cases, the same set of rules and principles regarding equality, non-discrimination and equitable treatment in representation needs to be applied (in terms of having the opportunity to be represented). Workers' need for the chance of workplace representation should be upheld, so as to prevent inadequate representation of their interests and establish industrial democracy (Webb and Webb, 1897; Wilson, 1974; Kaufman and Kleiner, 1993). For that reason, the role of designated colleagues who act as workplace representatives is important because they can protect worker's interests from management's perceived arbitrary actions (Kaufman and Kleiner, 1993).

Until recently, the categorisation of workers was based on their social status, as conceptualised by Weber (1978) (and as previously mentioned above in s.2.1): the authority or influence that workers might possess in work hierarchies (Berger, 1983).

White-collar workers were considered to be salaried office workers who were engaged in managerial, professional or clerical positions and used their knowledge in generating ideas and solutions (Shirai, 1983; Coates, 1986; Davenport and Prusak, 2000), while blue-collar workers used to perform largely manual or technical labour in mechanical, manufacturing, construction and maintenance occupations. As such, their skills were acquired through vocational training and apprenticeships and they were paid according to the amount produced (Van Horn and Schaffner, 2003; Lock, 2004).

According to the literature, white-collar workers as a separate pressure group could achieve more influence towards management because of their advanced educational status, consequent ability to understand written agreements and confidence in negotiating with management due to their high social status and close relations with management (Palmer, 1983). A recent survey showed that they were perceived to attract favourable concessions from management in bargaining processes compared to blue-collar workers, who were perceived to be the less privileged group (Persaud, 2011). In relation to this, white-collar workers were usually distant from blue-collar workers; as a result, workers' influence in workplace representation could be limited as not all workers' interests were satisfied.

It should be noted here that these are generalisations that could not hold in all circumstances and that the general tendency towards the de-skilling of white-collar work meant that their status, education and closeness to management are all questionable. However, their familiarity with procedures through their work could help in formal procedural situations.

On the other hand, blue-collar workers generally felt stigmatised for their incapacity to have knowledge of substantive laws, low status of their group and their hesitation to confront their managers (McDermott and Berkeley, 1996; Jameson, 1999). One study showed that even emotionally healthy blue-collar workers had to face the fact each day that "the work world assumed that they were less capable and less intelligent than they could be or wanted to be", a fact that partly explained why they did not participate in collective action (Briand, 1999, p.109). Nevertheless, it is true that they always sought

meaningful and equitable representation of the work group, because collectivisation empowers them and increases their involvement in decision-making processes for the satisfaction of their demands.

The above distinction has changed somewhat since there is a wide range of categories of workers who are defined based on whether they hold permanent, secure, well-paid jobs or are in precarious employment. Based on Standing (2011), an emerging global class structure is conceptualised, consisting of: the *elite* (the absurdly rich global citizens); the *salariat* (stable full-time employment, pensions, paid holidays, employer provided benefits often subsidised by the state); the *proficians* (the professional technicians who have skills and can market as professional consultants, freelancers, and who might actually enjoy moving from job to job); the *working class* (as in the traditional working class, manual workers for whom the welfare state was built but whose ranks have been decimated); and the *precariat* (a neologism that combines an adjective 'precarious' and a related noun 'proletariat'), the *unemployed* and the *socially marginalised*.

However, of all the above classes, it is the precariat which is perceived as an agent of change (Standing, 2011) as it consists of those individuals who must be flexible, do a lot of work for labour outside the workplace, move around, constantly update their labour power without developing themselves, and work precariously in short-term jobs without receiving remuneration.

It is worth mentioning Standing's (2011) characterisation of the above category of workers as the dangerous new global 'precariat' class, not a class in the Marxian sense (a class-for-itself) (see s.2.1 above), but a class-in-the-making which is internally divided but united in the lack of benefits and labour-related (social and economic) insecurities. Such uniting characteristics include: inadequate income earning opportunities (labour market security); lack of protection against arbitrary dismissal, regulations on hiring and firing (employment security); inability to retain a niche in employment (job security); lack of protection against accidents and illness at work (work security); lack of opportunity to gain skills through apprenticeship and training (skill reproduction security); uncertainty of an adequate stable income (income security); and most importantly, lack of collective voice in the labour market (representation security) (Standing, 2011).

In addition, during the last thirty years the situation has also allowed the massive growth of 'informal' employment, mainly in developing countries (such as in Latin American, Asian and African countries). Informal workers cover nearly two-thirds of the global workforce (Jütting and Laiglesia 2009); based on a European Social Survey (ESS), one out of six labour force members in Europe has been working informally (Hazans, 2011). This has consequently led to the increase of non-unionised workers and a growth in these specific forms of work that may engage part-time workers, temporary workers, employees without contracts, unpaid family workers, unregistered workers, non-professional self-employed workers, workers of informal enterprises or owners of informal enterprises; in practice, they are normally non-legally recognised or simply unregulated because ambiguities are created as to whether the employment relationship exists or is clearly defined (Carr and Chen, 2002; Chen, 2007, p.8; Croucher and Cotton, 2009; Hazans, 2011). Thus, it seems from the above that all categories of workers need to be represented at work.

Workplace representation

Unfortunately, it is noticed that from this wide range of categories of workers, the majority are exposed to various risks compared to earlier years. Currently, workers have to face a number of issues at work with the most important being the question of whether there is an employment relationship, income insecurity, and a lack of support from union representatives. Consequently, many studies refer to the appearance and growth of informal employment (as discussed above) as well as its detrimental consequences (for further details see pp.73-77), particularly on precariat workers.

Overall, collective (union) representation of workers is the ideal way to ensure that they are fairly treated at work (Slinn and Hurd, 2009; Barnard, 2006; Kelly, 1998). Firstly, it provides members with a voice in the union (Hirschman, 1970). Secondly, it "serves as a check on the tendencies of the individuals or small groups to dominate the organisation" (Clark, 2009, p.9) and last but not least, it creates a unified membership, mitigates oligarchy and fulfils the purpose of a union (Fullagar *et al.*, 1995). Hence, it is clear that all workers have a need for representation and particularly the need for the exploration of those processes which allow plenty of opportunity for representation, regardless of workers' socioeconomic, cultural, educational, and gender background. Consequently, an ideal resolution of worker grievance processes would be one which

satisfies both technical and highly-skilled workers' needs. Thus, none of the aforementioned groups of workers should be found to be unrepresented. All should overcome their negative feelings and anxieties (i.e. frustration, hesitation, discouragement) and mutually support each other.

Therefore, it can be argued that collectivity works best for workers and that the effectiveness of TUs (mainly depends on the (high/low) level of members' participation in union activities (i.e. CB, membership meetings). According to Bulger and Mellor (1997, p.935), "union success is dependent on members' participation". Ideally, higher levels of participation of union members promise effective unions and outcomes (Clark, 2009). Thus, the greater the employee participation, the stronger the union voice becomes at the workplace.

At this stage, it is also crucial to analyse and discuss the second need of workers, that of mobilisation.

Workers' need for possibility for mobilisation

Union power and effectiveness depends not just on the level of collective representation, but also on the level of the union's capacity to mobilise workers to organise and act collectively in the event of a workplace dispute with management (Kelly, 2005). Mobilisation is the basis for representation, a process whereby individuals with collective orientations are transformed into collective actors by acquiring control over resources pursue their collective interests (Cockfield, 2007; Tilly, 1978). More specifically, mobilisation involves "identifying the conditions and processes of workers' interest formation, the constructing of collective organisation, the act of mobilising, opportunity to act, the cost-benefits of action and the action itself" (Gall *et al*., 2001, p.4). However, the potential for collective action can possibly not occur during the mobilisation process, namely when: "individuals choose to pursue individual mobility, a common identity is not meaningful or formal leaders/representatives are not perceived to represent group interests" (Simon and Klandermans, 2001 in Haslam, 2004, p.212).

Therefore, it can be argued that indeed representation helps turn mobilisation into the powerful tool for protecting workers' interests. Mobilisation stems from workers' perceptions that workplace injustices, exploitation, and perceived loss of power exist

because there might be an infringement of their social and legal values and rights (Kelly, 1998). According to Haslam (2004, p.213), this social injustice has "to be internalised and subjectively experienced by those who are victims of it, and to be perceived as something that the individual shares with other members of a relevant in-group". Hence, all workers have the need to organise together, share common anxieties, concerns and problems, and increase their mobilisation potential against the dominant management, which always seeks to pursue its organisational interests (Tilly, 1978; Ackroyd *et al*., 2005).

As workers feel the necessity to strengthen their individual voice, instead of being inactive and powerless, their individual perceptions become collective. Through the internal processes of social identification and transformational leadership, individuals with common purposes are encouraged to mobilise and strengthen their power towards management (Cregan *et al*., 2009). According to Batstone *et al.* (1977), union leaders need to channel and control their group's collective interests so as to encourage its collective mobilisation (*of collective consciousness and actions*) against management for redress. This can be done through 'systems of argument' or 'vocabularies of motive',[27] namely, through the use of socially acceptable words that explain certain actions in a particular situation to 'mould' shop-floor opinions (Garey, 1999, p.45; Grint, 2005). In particular, when workers realise that there is a problem with management, they have not only to identify its cause and recommend any possible solutions, but also to justify their decision to mobilise (Reese and Newcombe, 2003). By making union membership meaningful and empowering workers to improve their position in the workplace through their collective participation, organisation and action, union voice becomes strong. In addition to the above, adequate economic resources are needed (Tilly, 1978; Kelly, 1998).

As a result, workers are assisted by shop steward 'leaders' in building a collective response to these perceived injustices by encouraging their solidarity and work group cohesion (Darlington, 2002). The most difficult part of this is to be convinced and activate their goals, and social and reward motives (Atzeni, 2009; Klandermans, 1984, p.113). The development of 'collective action frames' (Benford and Snow, 2000) assists workers to define their interests precisely.

[27] A phrase used by C. Wright Mills.

Therefore, workers will have fewer chances to mobilise collectively in the absence of union representation. Any successful collective mobilisation also lies in the individuals' collaboration with peers and a willingness to reach favourable resolutions. Union effectiveness is dependent on the workers' belief in the efficacy of a collective response that unions can make a difference (Kelly and Willman, 2004; Moore and Read, 2006). Based on the features of mobilisation theory, it can be said that it is applicable to unionisation situations, but because it is a general theory, it also applies to non-union situations.

Optimality for workers

Recent literature (Charlwood and Terry, 2007) suggests that a combination of union and non-union voice mechanisms might bring better outcomes for workers. More specifically, it has been recognised that "union presence is still a prerequisite for effective representation" as it results in higher wages and better working conditions, fairer employment terms and greater procedural fairness (Charlwood and Terry, 2007, p.320).

'Voluntary' non-union forms of representation cannot stand alone in the UK because they serve neither workers' nor employers' interests due to the absence of legal underpinnings or of some manifestation of collective employee power (Terry, 1999, p.28). However, data analysis drawn from the Workplace Employment Relations Survey (WERS) has shown that non-union representatives are more likely to be consulted regularly (and on a larger number of issues) than union representatives even in mixed representative (dual-channel) workplaces, probably due to the fact that integrative bargaining and consultation are allocated to be carried out by the former and distributive bargaining by the latter (Charlwood and Terry, 2007, p.327). Whereas, union representatives are capable of discussing both integrative and distributive matters (Charlwood and Terry, 2007).

On the other hand, union representation and mobilisation are more likely to stimulate worker participation than non-union representation and effects of union democracy may be 'spilled over' in mixed representative workplaces (Charlwood and Terry, 2007, p.327). Thus, this mixed or 'hybrid' form of mechanisms which shares both their advantages is regarded as the most optimal choice for workers in the resolution of their grievances.

The examination of all relevant voice-related factors leads to the following conclusion: ideal workers' settlements are expected only when management responds to their concerns, whenever these are expressed in unionised or hybrid form, irrespective of whether employees are loyal or satisfied at work.

Workers' perceptions as to how disputes can be ideally settled in the workplace are not only shaped by those cultural factors which were previously analysed (for example, class, gender, racial identities), but most importantly by institutional factors such as their experience and understanding of employee representational systems. For that reason, in the next section, all existing employee representational systems are discussed from their point of view by identifying the ideal form of voice mechanism, checking which vehicles of collective voice are available to them and which of all vehicles works best for them.

4.2 Employee Institutions

Institutional economics, which is based on bounded rationality rather than rationality and equilibrium, recognises the importance of institutions in economic life. In response to societal and economic changes, the institutional economics tradition (late 1880s-1930) sought to understand the role and evolution of 'human-made' organisations as well as the performance of markets and economies in determining economic behaviour. In particular, organisations help in creating and negotiating rules at work; consequently, in turn, these rules help workers to establish baselines that allow them to judge whether their collective interests are being increased or reduced (Kono and Clegg, 1998; Clegg, 2006).

The most widely acknowledged classification of employee institutions divides them into: the union (i.e. TUs) and non-union (i.e. works councils, professional and staff associations) voice mechanisms in employment.

Trade unions

Trade unionism is probably the most well-known employee institution. In their book *The History of Trade Unionism*, Webb and Webb (1920, p.1) defined a TU as "a continuous association of wage earners for the purpose of maintaining or improving the conditions of their employment".

In general terms, TUs are seen as *economic agents* because they defend employees' economic interests; *social agents* because they protect members' dignity at the workplace by establishing worker rights; and finally as *political agents* because they participate in job regulation by establishing rules agreed jointly with employers and as a lobby for broader political change in the area of high politics (Gennard and Judge, 2002, p.169). Thus, it appears that this is a mechanism with multi roles and powers.

When workers are organised in TUs, which are free and voluntary affiliations, they have greater chances of having a collective and formal voice. Particularly, unions represent fellow workers to employers in decision-making, rule-making and conflict resolution procedures with the aim of improving conditions of employment and influencing their outcomes, dealing with remuneration, ensuring job security and recognition, receiving protection against discretionary actions, accessing due process and any information regarding the investigation of grievances and contract negotiations (Carell and Heavrin, 2010; Larson and Nissen, 1987; Welch, 1994). Unions also have political functions in relation to the state and employers. These seek to influence societal rule-making which, in turn, affects DR mechanisms.

Based on the results of their empirical study of US trade unionism, Freeman and Medoff (1984) argued that the *collective voice/institutional face* is more beneficial to society as well as to the economy than the *monopoly face* because it reduces the chances of 'exit'. The former type is associated with their representation of the will of organised workers within enterprises, namely, by increasing the incentive for investment, improving morale and cooperation, limiting the scope for arbitrary actions, altering the nature of labour contract and the social relations of the workplace. These are further reasons why workers should trust unions. By contrast, the latter type is associated with unions' monopolistic power to raise wages above competitive levels.

It is evident that collective voice works best for workers in resolving their grievances. Nevertheless, there are some governments that try to eliminate this collective power. Particularly, South Korean Government, for instance, tries to promote individual statutory DR systems for workers (such as those discussed below in s.5.2) as an alternative channel to collective action, with the intention to externalise conflict from organisations. However, the system appears to be inadequate to support such an alternative due to various ambiguities in the South Korean labour law/statutes, the

adversarial nature of the system, the due process deficiencies, the weak enforcement, and the failure to protect workers' statutory rights (Croucher and Miles, 2009). This clearly shows how the strength of workers' collective voice and the huge collective unrest slowly led the Korean state to the creation of other channels capable of weakening workers' power.

The South Korean example further stresses the importance to referring to the legislative ways in which states can ideally support union voice. Every state needs to enforce legal protections if workers' interests are to be protected to encourage unionisation and legally oblige employers and the government to consider unions seriously. Ideally, this can be achieved through the adequate and effective implementation of a solid regulatory framework which is based on international labour standards such as that proposed by the ILO. The ILO is the basic international para-legal framework which responds to the workers' need to tackle social injustice, hardship and privation and focuses on key labour rights such as the 'Freedom of Association and Protection of the Right to Organise' [Convention (1948) (No.87)] and the 'Right to Organise and Collective Bargaining' [Convention (1949) (No.98)]. Similarly, other examples which formally promote the right to join (freedom of association), the right to form unions, the right to bargain collectively and the right to strike can be found in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (1953), the Charter of Fundamental Rights of the European Union (2009) (art.12, 21, 28, 30, 31), the European Social Charter (1996) (art. 5,6), the American Convention on Human Rights (1978) (art.16), the Additional Protocol in the Area of Economic, Social and Cultural Rights (1988) (art.8), and the North American Free Trade Area (NAFTA) (1994). However, it is observed that as joining the ILO or signing up to the core ILO Conventions is voluntary, it is an unfortunate but understandable fact that not all states will participate.

More specifically, TU rights and workers' legal obligations within such a context have to be clearly defined and be written in comprehensible language so that all workers can easily understand them. It is certain that the avoidance of unclear legal definitions of the rights and of vague, misinterpreted provisions reduces the risk of rendering fundamental workplace rights invalid and non-exercisable.

Additionally, considering the data from the International Trade Union Confederation (ITUC) annual survey of violations of TU rights (2010), it is necessary to ensure that workers are fully protected against anti-union discrimination, reprisals or any derogation clauses; justifiable reasons have to be given by employers in cases where they decide to enforce punitive measures against them, and employers' prosecutions have to be sought by workers in the case of unfair dismissals (UDs) (for further details see s.6.1). Parties, especially the employers, must be aware that if CB this does not happen in good faith and without undue pressure, penalties will be automatically imposed. Lastly, if a final agreement is reached, it should be legally enforceable by conforming to ethics, law and public order; otherwise, the right to strike,[28] the procedures for calling a strike and the types of strikes that are allowed must be clear to all parties.

By the end of the nineteenth century, workers attempted to strengthen their bargaining power at international level as well through the worldwide federations of Global Unions (GUFs), then known as 'International Trade Secretariats (ITS)' (see below).

The emergence of global unions

GUFs are international institutions which struggle to defend associated members' common interests in terms of solidarity through 'minilateralism' (a form of multilateralism); a way by which unions work closely in smaller groups to achieve robustness in international relations between unions (Archer, 2001; Cotton and Gumbrell-McCormick, 2012; Kahler, 1992; ITUC, 2009).

Particularly, the phrase 'global unions' refers to the combination of the ITUC, an international organisation, a confederation of national TU centres which represents 175 million of workers in 155 countries and of the 10 GUFs, international federations consisting of national TUs that operate in specific sectors of the economy (ITUC, 2009; Croucher and Cotton, 2009; Müller *et al*., 2010).

Their role is significant because workers do not feel abandoned as they are assisted in responding to the enormous political and economic changes around the globe, and struggle for workplace justice. According to Croucher and Cotton (2009, p.119), the

[28] It must be lawful and available to all categories of workers together with the justification of its exercise.

global unions are “the only institutions that can develop the collective experience, articulation and collaboration between unions in the ways demanded by globalisation”. However, as they have argued:

> *[despite being] politically unified, with high membership and good levels of engagement with unions, these bodies (global unions) are victims of their own success in bringing in more affiliates since demands increase as resources diminish* (Croucher and Cotton, 2009, p.115),

thereby deepening the GUFs financial crisis.

International coordination, effective communication, the constant sharing of similar negotiating experiences or information regarding any new changes and developments, the transfer of knowledge, any additional training, recommendations or regular transnational discussions in forums can diminish problems, empower affiliated TUs and assist mobilisation. In all cases, close collaboration between national TUs and TUs that are organised abroad is always necessary.

Up to this point, collective voice has mostly been discussed in its unionised form. In the next sections, the non-union form of voice mechanisms is analysed, starting from Works Councils (WCs) and Joint Consultative Committees (JCCs) as well as professional and staff associations that provide a way of dealing with low-level conflicts. At the end, reference is also made to the role of states through labour inspectorates in the occurrence of a conflict at work.

Works Councils and Joint Consultative Committees

WCs are “representative bodies elected by all workers at a particular workplace, regardless of union membership and inclusive of white-collar and many supervisory employees” (Freeman, 1994, p.98). The exceptions are Northern Ireland and England, whose rules and regulations do not establish any system of statutory WCs. The main difference between WCs and the remaining voice mechanisms is that the former represents ‘an organisation’s employees in their entirety (*workplace-based institutions*)’ (Brewster *et al*., 2007). In practice, works councillors are often union delegates who normally receive training, information, expertise and financial support from TUs and recruit new union members (Rigby *et al*., 2009; Streeck, 1995). Again, it is seen how TU’s powers and capabilities prevail that of non-union WCs.

The notion of WCs varies from country to country and so there is no common definition. However, WCs have been broadly defined as:

> *permanent elected bodies of workforce representatives (or occasionally joint committees with employers' representatives), set-up on the basis of law or collective agreements with the overall task of promoting cooperation within the enterprise for the benefit of the enterprise itself and employees by creating and maintaining good and stable employment conditions, increasing welfare and security of employees and their understanding of enterprise operations, finance and competitiveness*. (Carley *et al*., 2005, p.9)

The German WC is regarded as the 'prototype' of WCs in Europe, the benchmark which has influenced other WCs models (Frege, 2002, p.222). The German model of employee representation is based on the unique characteristic of co-determination (Mitbestimmung) which encourages workers and management's participation (co-management) in strategic organisational decisions regarding various employment matters. Kotthoff (1981) saw co-determination as an alternative way of institutionalising collective conflicts.

One of the most significant contributions is the one by Kotthoff (1981, 1994) who developed a works council typology. More specifically, he categorised the identified ideal types of WCs into two: the *effective WC*, namely, the respected regulator and steadfast WC, the cooperative counter-power, the WC as a cooperative hostile power; and the *non-effective/deficient WC*, which is ignored by management/workers, isolated by management and the extended arm of management. Effective WCs and unionisation have been shown to provide additional voice benefits to employees (Kleiner and Lee, 1997, p.14).

Rogers and Streeck (1995) provide a practice-based categorization of WCs. They distinguish between three ideal types of WCs, namely the paternalistic, the consultative, and the representative councils. *Paternalistic councils* are normally formed by employers or governments to prevent unionisation, whereas *consultative councils* are formed to achieve the competitive performance of the enterprise, through mutual cooperation in production and enhanced communication between workers and management which is owed to consultation. *Representative councils* are the means of institutionalised voice of the entire workforce which are formed, based on collective agreements and legislation, to satisfy general workplace-based interests through

participation in management. Without a doubt, the latter form of WC can be seen more favourably to workers. It is expected that representative WCs give greater voice to employees' needs and protect their interests, ideally through the strengthening and revision of relative legislative context and more democratic decision-making processes.

Currently, WCs in some European countries (i.e. Germany, Austria, Luxemburg, Belgium, and the Netherlands) have incorporated the following bargaining rights, namely: *the right to information* (to receive workplace information); *consultation* (to wait for a considered response, to exchange views); and *co-determination* (i.e. employers require WC approval for lawful decisions) (Carley *et al*., 2005). The rights to information and consultation, especially when based on the European directives on information and consultation [Directive 94/45/EU-Directive 2002/14/EC], give greater power and voice to employees by familiarising them with organisational matters through inclusive reports that are prepared and need to be consulted by management on questions of importance of the development of the organisation.

At the same time, WCs have serious limitations to its ability to influence management HR-related decisions. WCs with information and consultation functions appear to be restricted to consultative and advisory powers such as in staff and professional associations. WCs with co-determination functions act as joint councils in which management must by law reach an agreement with employee representatives (only where this is required by law, for example, in many continental European countries, not, for instance, in Eastern Europe or the UK) and on certain issues (such as employee conduct, work rules and the handling of grievances) (Fernie and Metcalf, 2005, p.226; Muller-Jentsch, 1995; Lahovary, 2000; Freeman and Lazear, 1995). The WCs, with their multiple functions, enhance workers' voice in settling small-scale day-to-day conflicts. Thus, it is understandable how limited their powers are compared to unions, which are capable of resolving all types of conflicts. Additionally, WCs cannot call for industrial action (such as a strike) to take place in response to employee grievances. The right to strike is ensured only if workers participate in unions. In practice, unions enjoy greater bargaining power when they threaten to strike (Lewin *et al*, 1988).

Formed-by-agreement worker representative institutions

An alternative though less favourable option for workers to that of TUs and WCs is indirect representation by the voluntary or formed-by-agreement *JCCs*, a works

council-type body most common in the UK, the USA, Northern Ireland, Australia and Japan, with less or no legal support (Carley *et al*., 2005; Cully, 1999; Hayter, 2011; Palmer and McGraw, 1995; Brewster *et al.*, 2007).

JCCs are found more in union-recognised than in non-unionised organisations (29 per cent, compared with 8 per cent), in large organisations (73 per cent if more than 500 employees, compared with 4 per cent with fewer than 25 employees) and in the public sector (28 per cent, compared with 11 per cent) (Leopold and Harris, 2009, p.477). More specifically, a committee of employers and employee representatives conducts dialogue on workplace issues that affect both sides (for example, working conditions, health and safety, and welfare) and shares information and opinions almost on a regular basis by supporting its joint consultation function, removing friction and improving communication and cooperation (Forsyth *et al*., 2008; Peccei *et al*., 2007; De Silva, 2006; Beaumont and Deaton, 1981). Therefore, it appears that unions tend to coexist with WCs and JCCs in that way, hence complementary notions (Brewster *et al*., 2007).

Professional and staff associations

In comparison to TUs and WCs, professional and staff associations are the least effective vehicles of collective employee voice.

Both types of associations are collective self-help mechanisms that support employees' interests in various ways, either by protecting them against harmful employment conditions or monitoring professional conduct and bargaining important benefits.

Nevertheless, this is questionable because such associations are, by definition, under a considerable more influenced in practice by the employers. Also, due to their limited or sometimes non-existent representational capabilities they cannot be rendered as the best voice employee mechanisms due to their limited or sometimes non-existent representational capabilities. In fact, they have little or no potential to represent large group of employees or even the entire workplace in an organisation, as happens in the TUs and WCs, respectively (Gennard and Judge, 2005; Younge and Van Niekerk, 2004).

Workers who join *professional associations*, professional bodies that are peripherally concerned with IR issues, may receive other types of benefits, which are ultimately intended to protect their employment interests, promote professional values and draw

strong professional identities (Rose, 2008). In particular, professional associations may: control the education and offer training activities to the new members of the profession; monitor behaviours and review ethical standards for their members; and advance the status of the profession in the wider community (Gennard and Judge, 2005, p.25). This type of association may encourage workers' professional development and further their interests by keeping them informed, interconnected and employed (DeGraff, 2010).

These benefits are shared only by those who are registered in the specific professional groups and do not serve employees much in dealing with conflict situations with management. Nevertheless, there are a few professional bodies (such as nursing) where professional associations act on behalf of their members, for instance, to negotiate the preservation of improved salaries and employment conditions; thus, they combine professional and bargaining functions by giving them some advantage (Younge and Van Niekerk, 2004).

On the other hand, *staff associations* have more representative and negotiating powers than professional associations. Compared to professional associations and unions, staff associations support all workers' interests, irrespective of whether they are registered members or not. However, it appears that they mostly support non-manual workers' interests (for example, operation or plant managers, and supervisors) in contrast with all other employee representational voice mechanisms. These have (small or large) memberships similar to TUs, but workers do not have the burden of a subscription fee as employers cover almost all incurred expenses (Gennard and Judge, 2002, 2005). For that reason, staff associations can de defined as employer-driven associations. In many cases, their membership is confined to certain types of employees of a single employer. For instance, there are staff associations of manual workers in existence, even though most staff associations are for white-collar workers. This implies that the rest of the workers who are not involved in managerial positions would probably have minimum involvement or influence in the decision-making stage of the resolution of worker grievance processes, compared to white-collar workers who normally maintain close and good relations with management. A serious limitation that also needs to be considered is that they have limited financial funds compared to TUs and WCs. Thus, it can be argued that the majority of workers will be poorly protected against employers due to the difficulty to negotiate effectively with them in such employer-driven

associations, and the lack of adequate financial resources which are always helpful in assisting in the representation of workers' interests (Farnham and Giles, 1995).

At this point, it is also important to mention what the role of states is in the occurrence of workplace conflict. According to the ILO Labour Inspection Convention of 1947 (No.81), states may intervene to ensure that employment laws are properly applied with the help of labour inspectors (LI).

Labour inspectorates

Labour inspectorates are either decentralised or are under the competence of central government administrations (European Federation of Public Service Unions [EPSU], 2012). In particular, they monitor the non-compliance with social security, labour, health and safety legislation and ensure the implementation of collective agreements and the provision of relevant information and advice in relation to conditions at work (EPSU, 2012). Depending on the nature of the violation, labour inspectors can either decide to start an administrative procedure leading to the imposition of a fine, or the issuance of a warning or the application of immediate measures in the event of danger to the safety and health of workers.

In the UK, employers may face a financial penalty (minimum £100 to maximum £20,000) as attached in a notice of underpayment[29] or be prosecuted for criminal offences such as the refusal to pay the national minimum wage, the failure to keep records, the production of false records, the obstruction of compliance officer (s.31 of the NMWA 1998). Another sanctioning mechanism is 'naming and shaming' by exposing those employers who do not comply with the national minimum wage law (only with arrears of more than £100), by making their names public.

Despite global economic crisis, a few states such as France, Spain, Greece, Poland, the Czech Republic and Hungary, have increased the number of labour inspectors and strengthened their competences and services to increase workers' protection against labour law infringements or any other problems that arise from bankrupt companies, promote decent working conditions, and implement labour standards at the workplace (EPSU, 2012). For these reasons, such labour inspection systems are considered to

[29] s. 19 and 19A of the National Minimum Wage Act (NMWA) 1998 as amended by the National Minimum Wage [Variation of Financial Penalty] Regulations 2014

contribute to social cohesion and economic development (ILO, 2006). Hence, it is understandable why unions still support and count on such initiatives.

On the other hand, due to inadequate financial resources and the increased demands on their services, countries such as Germany, Italy, and Latvia have cut the number of inspectors and restricted their competencies to check compliance with the legislation (EPSU, 2012). As a result, a decrease in the number of companies inspected can be observed, as can insufficient training and lack of appropriate strategies that cannot help in addressing the existing and new realities of the labour market (i.e. outsourcing, new illnesses, complexity of industrial processes) and the globalisation of labour relations (i.e. work within EU, freedom of movement) (EPSU, 2012; ILO, 2006).

Nevertheless, Convention No.81 is regarded as one of the most ratified of all ILO conventions (141 countries) that has served as a model for most national laws creating inspection systems for over 60 years. Since 2006, there is a continuous effort 'to modernise and reinvigorate' labour inspection policies, legal frameworks, structures and organisation at both global and national levels (ILO, 2006).

Therefore, it seems that workers are better protected when a labour inspection system is efficient and effective, namely, when it is well funded, well-staffed and well-organised (ILO, 2010). In addition to this, its effectiveness and the strengthening of compliance also depend on the close cooperation and support received both from workers and employers, and also from their organisations and representatives (ILO, 2010). Hence, workers may reconsider all these options before addressing tribunals (detailed discussion about the ETs follows in Chapter 6).

Figure 4.8 below depicts all these optimal conditions from workers' viewpoint that can ideally occur for the resolution of their grievances.

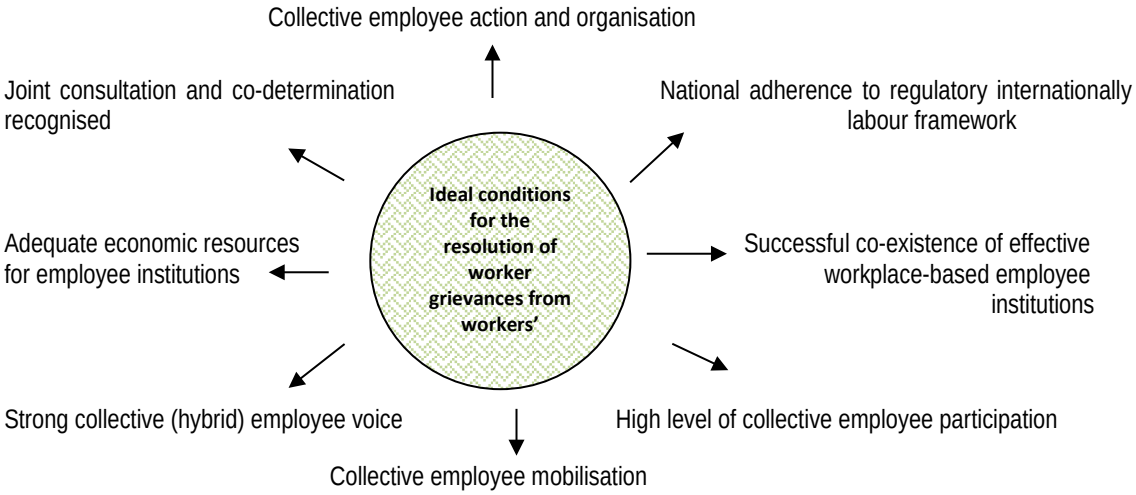

Figure 4.8: Ideal conditions for the resolution of worker grievances: From workers' viewpoints (Source: Author)

Unfortunately, it has become clear that over the last fifty years, there is an imbalance of power between workers and employers which has grown more since the latter's power has become even stronger and labour's interests and rights are heavily undermined by the disruption of the unions' strength and mobilisation capacity. Similarly, a decline in global labour solidarity (as measured by the percentage of unionised workers in the total workforce), hereby a decline in global unions' power against that of giant organisations that currently dominate the globe, is also noticed (Lerner, 2007). "Of the 100 largest economies in the world, 52 are not nations, but global corporations" (Lerner, 2007, p.16). A detailed analysis of the relative issue follows in the next section. Globalisation has been identified as the key underlying cause of such increasing imbalance.

4.3 The causes of workers' declining power in employment

4.3.1 Globalisation

Since globalisation emerged as the topic of academic discussion during the 1980s, various opinions have been shared as to its role and influence on labour. According to Kellner (2002, p.286):

> *the key to understanding globalisation is theorising it as at once a product of technological revolution and the global restructuring of capitalism in which economic, technological, political, and cultural features are intertwined.*

Globalisation is linked with the accelerated internationalisation of trade, increased flows of capital around the world, the cross-national distribution of manufacturing production, the liberalisation of financial markets, the rise of transnational corporations (TNCs), the spread of global networks connecting diverse markets via information and communication technologies and the promotion of the private sector (Jones, 1995; Higgott and Reich, 1998; Mills and Blossfeld, 2005; Kotz, 2002).

The liberalisation of national economies and labour markets (as discussed in the following sections) is also associated with the privatisation of public activities and assets, de-industrialisation, the elimination of social welfare programmes, the undermining and deterioration of working conditions and the deregulation of business (Kotz, 2002; Cronin, 2006). It has been argued that the accelerated mobility of capital and the geographical dispersion of production have increased capital's bargaining power and the competition between workers in rich and poor countries (Evans, 2010; ILO, 2012a).

On the other hand, the 'doubling' of the world's effective labour supply (especially of the blue-collar workers) has caused downward pressures on employment and earnings (i.e. increase in working hours, decrease in wages) as well as the weakening of their bargaining power (Freeman, 2007; Auer *et al*., 2006).

Lastly and most importantly, we must consider the absence of state intervention in the global arena in support of organised labour in relation to the prevalence of capital "undercut[ting] the possibility of labour to respond politically" (Evans, 2010, p.356).

As a result, massive re-structuring is disrupting work groups causing declining unionisation rates, increase global competition and growing incidences of workers' rights violations.

Declining unionisation rates

The neoliberal re-organisation of the social relations of production and particularly the 'informalisation' of employment (as explained above in s.4.2.1, p.58), which has led to the increase of non-unionised workers, have weakened not only the unions' membership strength and bargaining power, but also their workplace organisation at national level (Bieler, 2008).

Since the 1970s, there has been a negative trend of union membership in various European and non-European countries. Liberal market economies such as the UK, the USA, Northern Ireland, Japan, Canada, Australia and New Zealand have faced the sharpest decline in union membership (Schmitt and Mitukiewicz, 2012; Welfens, 2013). In the Nordic countries (Sweden, Denmark, and Finland), and Belgium (to a smaller extent), the membership rates are higher or stable compared to other countries (Schmitt and Mitukiewicz, 2012; Van Ree *et al*., 2011). Visser (2006), Van Ree *et al.* (2011), and Dimick have maintained that this is observed due to the use of the Ghent system, that is:

> *a voluntary system of unemployment insurance (fund fees, benefit levels) in which labour unions administer publicly subsidized insurance funds and along with employers and the state participate in unemployment insurance policymaking.* (Dimick, 2012, p.319)

Norway, a non-Ghent country (since mandatory employment insurance was introduced in 1938), also has high union membership rates. According to Western's (1997) argument, this occurs due to its high degree of centralisation in bargaining.

Nevertheless, in all cases, the rates of unionisation as well as labour's material share of global product have dropped dramatically due to this global change in economic transformation of the capitalist system.

Global competition

Another negative effect of economic restructuring is the increased global competition. This has caused the closure of a large number of companies in Western developed industrial countries [the 'core'] which, in turn, have had to urgently move to emerging and growing international markets in developing countries (for example, China, India, Egypt, and Latin America) [the 'periphery'] to diminish all costs (*this practice is known as offshoring*). This change has also negatively influenced workers' social benefits and rights, making them work for much lower labour wages, for more working hours and so on. Besides, workers' real wages and pensions are inevitably reduced, due to currency devaluations and the imposition of governments' tight monetary policies to reduce inflation (Siggel, 2005). According to Froebel *et al*. (1980), this division of labour into core and periphery is known as the 'New International Division of Labour (NIDL)'.

Labour seems more and more threatened by capital strategies which indirectly demand the relocation of locally-organised TUs to other countries. In other words, workers have to undertake an extremely demanding task, to become 'glocals' by expanding simultaneously in global and local directions (Mohamed, 2008; Ritzer and Atalay, 2010, p.160).

As a result, the level of unemployment at national level (in the 'core') escalates dramatically, especially in the manufacturing sector, which is basically the base for union recruitment (Serrano *et al*., 2011; Schramm, 2005) and further de-skilling is noticed in the 'periphery' (McCallum, 1999). In addition, the rapid decline in the manufacturing sector (textiles, metals) is followed by a shift from the manufacturing sector to tertiarisation or the so-called service sector (education, health, business and legal services, and consulting).

Violation of labour rights

The unenforceability of relevant labour laws and the inadequacy of national labour regulatory environments are important unresolved issues that discourage trade unionism.

Unfortunately, a number of violations of labour rights have been recorded mostly at international level and grouped under the following six main categories: 1) the freedom of association and CB (i.e. murder or disappearance of union members, destruction of union premises); 2) the right to establish and join worker and union organisations (i.e. dissolution of union by administrative authority); 3) other union activities (i.e. union control of finances, general prohibition of union participation in political activities); 4) the right to bargain collectively (i.e. exclusion of workers from the right to bargain collectively, the intervention of the authorities); 5) the right to strike (i.e. exclusion of workers from the right to strike); and 6) the right in export processing zones (EPZs) or free-trade zones (FTZs) (i.e. restricted rights in EPZs) (Kucera, 2002). The last violation concerns only the developing and the least developed countries which normally establish these zones.

It is evident how far unions' collective rights are suppressed and how labour is weakly positioned against management. However, it can be argued that workers still have the chance to balance this inequality, by considering globalisation's non-destructive effects through the preservation of a strong and united voice, accompanied by their

cooperative and collective actions with their fellow members, both at regional and international level. Only then will it be easier for workers to organise and mobilise effectively.

4.4 Conclusions

The most essential concepts[30] as identified in this chapter have provided a generic background for this study that helped in the exploration of the most optimal ways for workers to resolve workplace disputes. It is concluded that the optimal conditions in the resolution of worker grievances with management occur at the collective level and inside an organisation. Here, it should be clarified that the present study is strictly limited to those conflicts between workers and employers, rather than between individuals within a working group, because there is a greater intention to give more emphasis to the former type of conflict. The latter type of conflict, which can also negatively impact an organisation (reduce productivity, harm morale), is classified based upon level (for example, individual, work team, department) and occurs due to the heterogeneity of values and interests such as wage differentials and dilution (Kraus, *et al*., 1984; Suh, 2009; Rahim and Golembiewski, 2005).

The 'voice' element is undoubtedly an inseparable part in a dispute settlement process. In its absence, workers have difficulties in resolving their conflicts with management. It can be argued that if the entire workforce or employee representatives approach, and co-determine with management without hesitation, irrespective of management's responsiveness or workers' approachability, loyalty and satisfaction at work, then they have greater chances to gain a positive response to their concerns (see above s.4.1). Ideally, voice becomes powerful, effective and enhanced with their high collective representation[31] (preferably of skilled workers) and mobilisation in legally supported,

[30]Role of work groups, power of collective voice/union voice, collective representation, collective mobilisation

[31] It is observed that despite the feminisation of the labour market, the access by some women to collective representation remains lower than that of men, while racial and ethnic minorities are the most under-represented category of the labour force (Tadesse and Daniel, 2010; Pillinger, 2010; Holgate *et al*., 2010) (s.2.2). Moreover, some studies have shown that women hesitate to seek such representation. This may happen due to a lack of confidence in their own abilities, a lack of time due to family responsibilities, a lack of knowledge of the benefits of union membership or even due to the male-dominated culture of unions (s.2.2) (Garcia *et al*., 2003; Pillinger, 2010). Hence, it is more likely that they will be solely reliant on the law to deal with their problems. In addition to the above, by taking into account the concept of class culture, the lower class groups are also expected to have the lowest workplace representation access.

sophisticated, hybrid, workplace-based, but not employer-dominated institutions (Kelly and Willman, 2004).

The existing employee institutions (i.e. TUs, WCs, professional and staff associations) serve as conflict resolution bodies with various powers, delegated to facilitate either high or low degrees of bargaining at the collective level at an early stage (i.e. when their employment relationship is still in effect), by eliminating the possibilities of 'exit' and victimisation. Considering TUs' substantial, multi-functional and strong negotiating powers, workers can satisfactorily represent their concerns in various conflict situations with management and positively influence their working conditions. The resolution of worker grievances through the TUs is considered optimal when strong (in participation, collectivisation) unions, properly trained, are enabled to organise and negotiate collectively with employers, lawfully and in good faith. They can also achieve a legally binding CB agreement whose terms and conditions have been largely determined by worker representatives. It is important to note that these duties should be secured through adequate legislation. Thus, it is confirmed how the union voice factor is highly important in the resolution of worker grievances.

However, WCs may serve as the best mechanism for minimising workers' low-level conflicts and satisfying their general workplace interests. This is because they are the 'representative voice' of the entire workplace and may intervene in the bargaining process by discussing issues of mutual concern with management through the sharing of information, opinions, suggestions and ideas as well as through consultation and co-determination. It is implied that the support of the TUs (i.e. financial support, bargaining power) is responsible for the success of WCs, that is, the increased employee involvement, thus, the strength of employee voice (Pfeifer, 2010). In almost all countries, WCs may bargain a range of issues, but other concerns such as the bargaining of collective agreements on wages, working conditions and working times will never be discussed due to the fact that, by law, these can only be dealt with by unions and managers/employer associations to promote mutual trust and cooperation between management and employee representatives in WCs (Thelen, 1991; Freeman,

1994). Essentially, a combination of unions and strong WCs promises to be the optimal situation for employees.

A closer review shows that professional and staff associations have limited negotiating powers compared to TUs and WCs. Professional associations are only involved with members' professional training, the negotiation of their valuable benefits and the defence of ethics to ensure that some workers are not marginalised because of their background, and the processes within the associations are transparent (Ife, 2001, p.189). Staff associations have limited powers compared to those of unions as they cannot satisfy all workers' interests, only those for a particular group (i.e. white-collar workers), or make it feasible for all workers to participate in decision-making processes. It is also uncertain whether these can negotiate in favour of workers when they are a creation of their employers, who encourage their existence to obstruct trade union operations and activities (Farnham, 2000).

Encouraging results in the resolution of worker grievance procedures might be expected in the future, only if:

a) there are no restrictive requirements on membership for those interested in engaging with employee-related associations, namely, access to all workers from all occupational levels, irrespective of class or it is even better if membership fees are avoided to encourage workers' participation

b) the registered members who belong in non-managerial (low or mid-level in occupational scale) positions supersede those in top managerial positions in number

c) employee-related associations have negotiating rather than consulting functions only, and finally

d) these associations necessarily incorporate DR training programmes attended by all workers.

Except for the above employee institutions, the state with the help of labour inspectorates may also support workers in the occurrence of a workplace conflict. It is important that despite the negative effects of the global economic crisis, there is a constant need for improving a system that ensures compliance with labour legislation and implements labour standards.

Nevertheless, due to the structural, institutional, economic, political and social changes which have resulted from the neoliberal capitalist restructuring in various European and non-European countries and globalisation (s.4.3), unions have had their bargaining power and membership strength weakened significantly as well as labour having been deprived of its social benefits and fundamental rights. The global competition, the abrupt relocation of locally organised labour, the rapid decline in the manufacturing sector, the unenforceability of relevant labour laws in combination with the identification of various violations of labour rights and the massive growth of informal employment have deteriorated workers' efforts to exercise their power collectively.

Despite the current imbalance in workers' collective power, this study makes clear that workers will always need the support and close collaboration of their collective institutions (s.4.2) at local and international levels since these can encourage them to organise collectively by maintaining (global) labour solidarity as far as possible and cope with major political and economic changes. In all cases, a clear legal definition of employment relationships and of workers' rights-obligations in the workplace can encourage and secure their collective mobilisation both in the core and the periphery. Finally, workers' bargaining power cannot be strengthened without both parties' adherence to international and mutually agreed non-discriminatory terms, which do not infringe the principles of democracy and equality.

But workers cannot be constantly mobilised and for that reason, they find other alternatives to mobilisation. Hence, in the next chapter based on the identification of most relevant theories on alternatives to mobilisation, whether there are optimal situations when the factor of mobilisation is absent and dependent on the presence or absence of collective voice factor in labour negotiations is examined.

Chapter 5: DISPUTE RESOLUTION THEORIES ON THE ALTERNATIVES TO MOBILISATION

The previous chapter concluded that workers need collective instruments at work. From their perspective, optimal dispute settlement mechanisms are strongly associated with the 'collectivity' factor, that is to say, collective voice, collective representation, collective mobilisation, collective organisation and collective action.

In this chapter, key DR theories on the alternatives to mobilisation have been identified that support and hinder the exercise of collective power. In relation to this, the effectiveness of the three major Alternative Dispute Resolution (ADR) processes that are currently available to an individual worker is also discussed so as to see if any of these processes is ideal for the resolution of workers' disputes. Finally, Budd and Colvin's (2008) framework is introduced as it is argued to be the best research tool that can explain whether the ET system –the only extra-workplace process– is the ideal justice system for workers.

5.1 DR theories that support collective and individual tactics

Representation that is driven by workers relies on historic mobilisations. Nonetheless, workers cannot constantly be mobilised because they are wage dependent and therefore cannot threaten their incomes on a permanent or semi-permanent or even a frequent or prolonged basis. Hence, workers generally support alternative means of resolving disputes. For that reason, it is necessary to identify theories (see below) that describe 'alternatives to mobilisation'. Normally in such cases, DR mechanisms are implied. DR is necessary between occasional mobilisations driven by workers because this is the only way for them to continue earning without giving up on all disputes. For managers, it provides a way of dealing with disputes without halting production.

Based on the relative literature [Fisher *et al.* (1991); Adair and Brett (2005); Deutsch (1994); Nash (1950); Walton and McKersie (1965); Walton *et al*. (1994)], the key theories in DR which are identified to support the exercise of collective power are: Deutsch's (1949) 'theory of cooperation and competition', Walton's and McKersie's (1965) 'behavioural theory of labour negotiations' and Walton, Cutcher and McKersie's (1994) 'theory of strategic negotiations' (Figure 5.9).

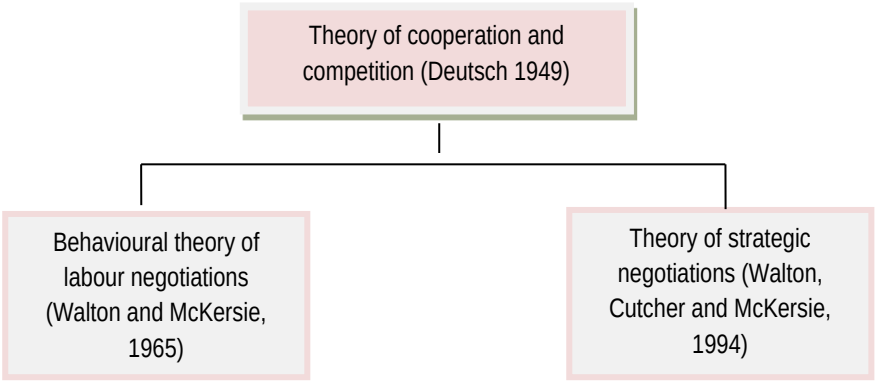

Figure 5.9: Key DR theories on collective tactics (Source: Author)

Deutsch's (1949) theory serves as the key DR theory. Particularly, it clarifies what may give rise to a constructive ('integrative') or destructive ('distributive') CB (see s.2.2 above) process. It explains that when the social situations of 'cooperation' (effective communication, coordination, friendliness, sense of mutuality) and 'competition' (suspicion, lack of confidence, desire to reduce others' power) interrelate, they may influence the course of conflict, and their interaction will ideally lead to the achievement of a negotiation (Deutsch, 1949, p.129). It is also implied that if the process is solely cooperative, workers can defend their interests only when there is productive dialogue, good faith and mutual cooperation with management. However, the combination of the conditions that were described in both types of bargaining processes or even those that described the integrative bargaining process no longer exist in current practice.

Similarly, Walton and McKersie's (1965) 'behavioural theory of labour negotiations' and Walton, Cutcher and McKersie's (1994) 'theory of strategic negotiations' illustrate alternatives to mobilisation that appear to be temporary, but they are necessary 'substitutes' for workers because, as already mentioned, mobilisation is an exceptional event which they ideally wish to avoid.

Walton and McKersie (1965) described a 'set piece' of CB by mainly focusing on how parties operate behaviourally in it; they presented a coherent theoretical framework of four sets of sub-processes of negotiation and their interrelationships which applied to highly formalised CB. In detail, they added two more sub-processes to those recommended by Deutsch, namely: 'the attitudinal bargaining' in which the decision-makers seek to understand parties' behaviour, change their attitudes and impart trust,

respect, cooperativeness or competitiveness; and the ‘intra-organisational bargaining’ in which negotiators often represent a group, instead of individuals, with the intention of achieving consensus. Nevertheless, workers are rarely involved in ‘equilibrium’ negotiating situations with management that were then more common but which are now less applicable due to the current declining union power.

Walton *et al*. (1994) proposed the combination of ‘fostering’ (i.e. support integrative bargaining, positive attitudes and consensus) and ‘forcing’ (i.e. support distributive bargaining, adversarial attitudes by seeking divisions within the opposing party while promoting solidarity in their own party) strategies in CB. Ideally, it may be better for workers to follow both strategies collectively either concurrently or sequentially, whenever these are encouraged and recommended by labour negotiators (Walton *et al.*, 2000, p.324, 337). For instance, creative solutions favourable to workers and consensus with management may be reached if integrative bargaining is used in a forcing campaign, as the latter encourages information control and the use of deadlines (Walton *et al.*, 2000). Nonetheless, this is rarely encouraged, or is an unusual situation in real practice.

We can now appreciate the immense differences in employers’ attitudes in dispute settlements during the past thirty years. It is this ideal world of bargaining, described as existing back in the 1980s, from which US employers largely moved away, but not always due to the fact that they had to face workers’ strong collective power in certain industries (for example, steel and automobile).

Based on the above theories, both parties aimed to enhance mutual power; neither party intended to reduce the power of the other party (for example, by enhancing its own power or allowing power differences to prevail). Parties were leaving negative attitudes aside by collaborating and sharing information that helped in serving their mutual interests and getting common gains. Thus, none of the parties influenced the other’s ‘reservation price’ and ‘resistance point’ (Wilkinson *et al*., 2010).

On the other hand, Nash’s ‘equilibrium theory’, which not only promotes individual strategies but also encourages negative behaviours that are sub-optimal for a worker, is discussed below.

Nash's equilibrium-game theory (1950) (Nobel Prize in 1994) is of limited use for a worker as it deals with more mathematical rules, which are linked with the tendency to support practices that are also bizarre in reality. In such non-cooperative games, negative behaviours (hostility, anger, anxiety, tenseness, hurt, frustration and fear) are attracted because the players who are normally rational and well-informed about the structure of the game (*Homo rationalis*) act independently, without collaborating with others and deviating from their own strategy option (after forecasting opponent's choices); instead, they only care about maximising their self-interests (*Homo economicus*) (Nash, 1950, pp.286-287). Therefore, this situation also prevents individuals from mobilisation and does not help them to concede to enforceable agreements. Its complex structures virtually prohibit many workers from understanding the mechanisms involved and therefore disadvantage them.

However, to see whether the above described conditions (cooperation, collective power, mutual benefits, consensus, non-adversarial attitudes) are present in practice, there is a need to analyse the three major DR processes in employment, known as mediation, arbitration, and conciliation.[32]

5.2 DR processes available in current employment practice

ADR is a US-originated term without any overarching agreed definition. According to the glossary of Civil Procedure Rules (CPR) 2014, ADR is a "collective description of methods of resolving disputes otherwise than through the normal trial process".

In the following sub-sections, the three key ADR methods, that of mediation, arbitration and conciliation, are discussed to see whether any of these can help a worker to resolve a dispute that has arisen with management, in the absence of collective mobilisation and power.

Mediation

According to Moore (1993, p.15), mediation is:

> *the intervention in a negotiation or a conflict of an acceptable third-party who has limited or no authoritative decision-making power and assists the involved parties to voluntarily reach a mutually acceptable settlement of the issues in dispute.*

[32] These processes are sometimes covered under the ADR term.

Mediation is certainly useful for resolving a narrow range of disputes (for example, relationship breakdowns, personality clashes, communication problems, bullying, misinterpretation of language and behaviours) (Poitras, 2005; Spencer and Brogan, 2006; ACAS and Chartered Institute of Personnel and Development [CIPD], 2013). However, its usefulness is questioned in cases of serious misconduct, harassment and discrimination that require workers' engagement in direct dialogue with their employers can be disputed (Dix *et al*., 2012).

It has been suggested that both parties could easily give up their responsibilities due to over-reliance on mediators. This process is used by the employers, but in a form where mediators intervene in the process by directing parties and act as dealmakers rather than introducing a conciliatory mood (Staff, 2002; Leat, 2007; Urwin *et al*., 2012). Furthermore, there may be an issue of non-agreement on the identity of the mediator that will interfere in the process (Beale *et al*., 2011). However, even in the case of consensus, workers may hesitate to use mediation due to the upfront costs of the mediator that are borne by them (Beale *et al*., 2011).

Some have argued, therefore that mediation might possibly be ineffective and a waste of time; so, parties might not be able to reach an agreement (Goldsmith and Ingen-Housz, 2011; Quanaim, 2006). Thus, it has been suggested that the careful drafting of a policy for DR might be a better solution than that of following a mediation process. In relation to this, if parties agree to a resolution of their conflict, their agreement will not be legally binding unless this is agreed. Lastly, sometimes it is also questioned whether mediation benefits long-term relations between employers and employees, and also whether there is an incentive for mediation due to its voluntaristic approach, considering all the above disadvantages (Banks and Saundry, 2010).

Arbitration

Arbitration takes place when management and workers enter into a legally binding contract to arbitrate either in advance or after the dispute arises (Coltri, 2010). After submitting the relative evidence and documents, they conclude with a written, binding award that binds the parties to that award (no precedent) (Dunlop and Zack, 1997; Cooley and Lubet, 2003). The arbitral decision cannot be appealed, whereas courts' decisions are routinely appealed and workers are confined by traditional legal remedies (ACAS, Accessed 25/8/2014; Korn and Sethi, 2011; Kidner, 2014; Hardy *et al*., 2013).

Hence, the arbitration process is more expensive, lengthy and procedurally formal in relation to mediation and conciliation (Zack and Dunlop, 1997).

Research has also shown that arbitration works in favour of employers who are more likely to be repeat players in the system (Bingham, 1997). Furthermore, workers may have the arbitrator or a panel of arbitrators of their choice, but arbitrators are those who control the procedure and have the final word and so workers' participation in the arbitral process is minimal since they cannot determine the final outcome (Roberts and Palmer, 2005; Berard and Kirkpatrick, 2015). Moreover, the oversimplification of the arbitration process eliminates due process protections and influences the equity factor by discouraging workers (Stone, 1996).

Conciliation

Mandatory early conciliation (EC) can also take place in employment practices (ACAS, 2011; TNS BMRB, 2012; Lewis, 2013). According to the recent tribunal rules[33] (Regulation 6) (s.6.4), anyone who wants to make an ET claim (s.6.3) will have to contact ACAS or the early conciliation support officers (ECSO's) first[34], and have up to a month to attempt to resolve the dispute with the employer (TNS BMRB, 2013; ACAS 2015). If claimants do not contact ACAS, their tribunal claim will be rejected and ACAS will have to issue a certificate confirming this or that is impossible to take place (Regulation 5 (7)). Unfortunately, it was noticed that "of all the claims lodged at an ET, less than a fifth of claimants will have contacted ACAS for advice before submitting their claim" (explanatory note no. 58, part 2 of the Enterprise and Regulatory Reform (ERRA) 2013).

In cases where conciliation is achieved, it is possible for the worker to feel more reluctant to accept the new scenario-solution that has been suggested to him or her, especially if it is non-binding. As it is also supported, conciliation is not concerned with the quality, reasonableness or equity of settlements (Busby *et al*., 2013). If it is not achieved, there is a risk that conciliation will be used by one of the parties

[33] Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014/254

[34] Whereas in the past the officers used to have to contact the parties

(normally the management) as ‘a probing exercise’ to learn the weaknesses of the other; thus, when:

> *learning the true strength of its position may decline to settle when newly acquired facts lead it to believe it has a stronger case than it thought and opt instead for litigation using such newly acquired ammunition by insisting on litigation*. (Zack, 2005, pp. 406-407)

Finally, in all the aforementioned ADR processes, the worker represents him/herself unless he or she wants legal representation.

Hence, it can be argued that mediation, arbitration and conciliation are not ideal processes for workers. It seems that none of the parties cooperate. On the contrary, they tend to act independently, have their own different strategies and care about their own interests without attempting to reach a common agreement or negotiate.

Thus far, the causes of workplace conflicts at a collective and individual level have been identified (Chapters 2 and 3). Then, based on the literature review, it becomes clear how powerful the element of (union) voice is within the workplace (Chapter 4). In addition, the two most important factors of representation and mobilisation responsible for unions’ effectiveness were also highlighted (Chapter 4). Later, all existing employee voice mechanisms were presented that can be chosen by workers as long as they do not ‘exit’ from the employment relationship (Chapter 4). Alternatively, all available DR processes were evaluated that apply when collective mobilisation is not possible (Chapter 5).

5.3 Budd and Colvin’s conceptual framework

The identification of those optimal conditions for the resolution of workers’ grievances within the workplace (Chapter 4) in combination with the exploration of the most relevant DR theories and processes on alternatives to mobilisation (Chapter 5) reveal the major changes in the way that grievances are resolved throughout the years. This background also helps in what we expect to see in the ETs (discussion follows in the next chapter), the last resort for resolving employment disputes.

It is evident that of all the factors which have been discussed and evaluated so far (such as collectivity, human behaviour, rationality, emotions, conflict situations, strategies and so on), collectivisation remains the key factor (this underlies Budd and

Colvin's framework that is discussed analytically below) and the basis for the attainment of an ideal negotiating outcome for workers. By regulating social interaction through social rules, workers are able to struggle for their interests when they negotiate collectively and cooperate with management.

Thus, it seems that success is feasible only when the conflict stays within the organisation because workers' collective power and voice, effective representation and mobilisation give them the opportunity to be heard, express their concerns on time and positively influence the final outcome of bargaining before reaching the edges with their employer, who is normally in excess of his power.

Unfortunately, none of the ADR processes concentrates the above features and conditions. Therefore, there is a need to evaluate now with the help of Budd and Colvin's framework whether the last extra-workplace conflict resolution process, that is the ET system, is ideal for workers.

In this study, Budd and Colvin's (2008) framework has been selected to help in gaining detailed information about the effectiveness of the ET system as a justice system for an individual worker since this well-conceptualised model applies to DR systems in a wide variety of contexts (Budd and Colvin, 2008, p.1). It has helped me in: evaluating the ET system (Chapter 6); examining whether the transition from collegial workplace support to less supportive external environments is experienced negatively by workers (s.6.1); and seeing whether the voice/representation factor is that important in external environments (s.9.2.3).

In general, Budd and Colvin (2008, p.2, 9) have explained that despite the fact that a number of studies have examined various measures of grievance procedure effectiveness that capture aspects of their suggested broader metrics such as grievance processing speed, attitudes towards and satisfaction with grievance procedures, grievance initiation and grievance outcomes, there are still no accepted, complete and perfect metrics for the evaluation of these processes. In relation to this, researcher community cannot even agree as to what grievance procedure effectiveness is (Lewin, 1999).

It has also been argued that from the above list of measures, the speed of a resolution gives little information about the effectiveness of a DR process (Bemmels and Foley,

1996; Lewin, 1999) or is not related to satisfaction with and attitudes towards grievance processes (Clark and Gallagher, 1988; Gordon and Bowlby, 1988). The latter measure has also been confused with others such as that of union satisfaction, union commitment and so on (Fryxell and Gordon, 1989; Bemmels, 1995). Thus, these two significant measures (i.e. speed and satisfaction) have been characterised as limited and flawed dimensions in this context (Budd and Colvin, 2008, p.20). Similarly, the same conclusions applied to non-union workplace DR processes (s.5.2).

Budd and Colvin (2008, p.2) concluded that there is a lack of good metrics for undertaking comparative analyses within areas of workplace DR research. Lewin (1999, p.158) also argued that the research on grievance procedures has failed to consider the effectiveness of these processes in relation to the effectiveness of other forms of workplace DR. Plus, it is noticed that individual measures have never been combined into broad metrics (Budd and Colvin, 2008, p.8).

As justified by Croucher *et al*. (2013, p.50), Budd and Colvin's model "combines theoretical parsimony and comprehensiveness, but also it is founded in a sound analysis of the fundamentals of the employment relationship". The framework relies on the most valid and consistent set of criteria (see below) which helped in comparing and assessing the effectiveness of DR processes. It is supported that "more precise analyses require identifying and measuring specific components of efficiency, equity, and voice" (Budd and Colvin, 2008, p.7).

More specifically, Budd and Colvin replaced traditional measures such as those of speed of settlement and cost (Ponak and Olson, 1992; Lewin and Peter, 1988; Ury, Brett and Goldberg, 1989; Bohlander, 1992), participant satisfaction in relation to the process and the outcome (Gordon and Bowlby, 1988), fairness/consistency of award outcomes (Fehr and Schmidt, 1999; Bingham and Mesch, 2000; Klaas *et al*., 2006; Wheeler *et al*., 2004) or independence/impartiality of the decision-maker (Feuille and Chachere, 1995) with that of efficiency, equity and voice. Since these are properly categorised under the three descriptive metrics, a more complete picture of an assessed DR process is expected.

After considering Hyman's (2001b) 'geometry of trade unionism' and Budd's (2004) 'geometry of employment relationship', Budd and Colvin (2008) concluded with the

'geometry of dispute resolution'. The three metrics were suggested to qualitatively compare and evaluate various unionised, non-union and employment DR systems in the USA (i.e. grievance arbitration, expedited arbitration, grievance mediation, non-union open door policies, non-union unilateral decision-making, non-union management appeal procedures, non-union peer review, non-union ombudspersons, employment law litigation, employment law arbitration, employment law mediation) (Figure 5.10).

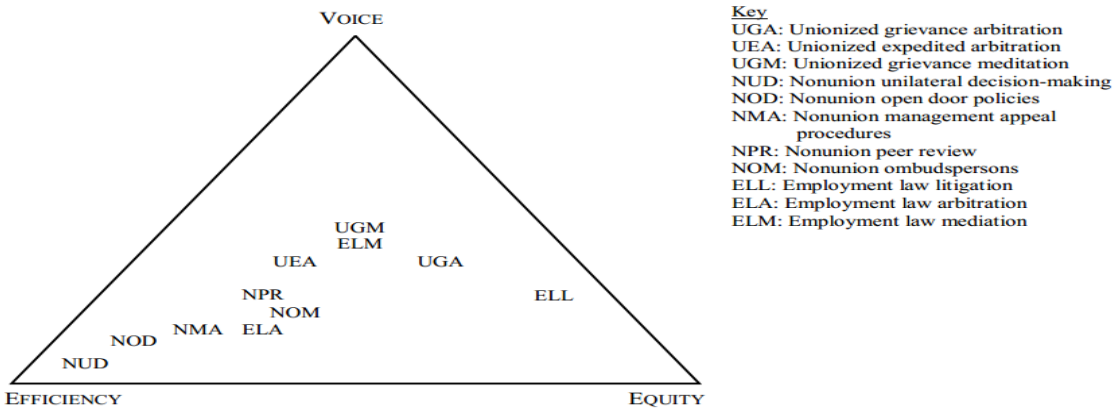

Figure 5:10 The geometry of dispute resolution by Budd and Colvin (Source: Budd and Colvin, 2008)

In detail, based on Budd's (2004, p.463) argument, 'the objectives of the employment relationship' are:

- *'efficiency'* that refers to the effective use of scarce resources, economic prosperity, speed (resolution within reasonable time limits), promotion of productive employment, financial and emotional/psychological costs,
- '*equity*' which is related to fairness, similar treatment of parties, procedural and distributive justice, equally accessible irrespective of gender, race, national origin or other personal characteristics, effective remedies when rights are violated, unbiased decision-making, ability to appeal to a neutral body, and
- '*voice'* that entails the ability to participate (individually or collectively) in the DR procedure (for example, by having a hearing, presenting evidence in one's defence, being represented if desired) and affect decision-making.

The three terms were defined in the context of workplace DR procedures. Therefore, DR systems which are slow in achieving a resolution and costly - any costs related to

the psychological factor are also included - are considered ineffective. Moreover, an effective DR procedure fosters productive employment. Similarly, equitable DR systems are linked with unbiased outcomes, the provision of effective remedies in the case of the violation of workers' rights, transparency, reliance on evidence, existence of safeguards and equal accessibility to it, irrespective of gender, race, national origin, or other personal characteristics. Lastly, the participation in the process, the presentation of evidence and representation by third parties guarantee strong voice DR systems.

Nearly a decade after its initial recommendation, the model has not been re-developed yet. In fact, this tool has already been applied by: a) Croucher *et al.* (2013) for the evaluation of a South Korean mechanism for resolving individual employment disputes; b) Radich and Franks (2013) for the evaluation of employment DR systems in New Zealand; and c) Dunphy (2011), an attempt to examine DR systems in Ireland.

Indeed, so far it appears that it is the only complete, comprehensive, analytical framework which serves in the best possible evaluation of any existing justice system in any place of the world. For all the above reasons, the particular framework is considered to be the most suitable model for examining the ET system.

5.4 Conclusions

The examination of relative theoretical DR models has shown that the 'theory of cooperation and competition' (s.5.1) is the cornerstone in DR. Together with the 'behavioural theory of labour negotiations' and the 'theory of strategic negotiations' (s. 5.1), the three theories have been identified as those theories which are alternatives to mobilisation, and encourage collective strategies that may lead to win-win bargaining outcomes. For instance, especially in difficult times when companies experience the negative effect of a recession and cannot offer the wages that the workers demand, parties could negotiate the terms of their employment in a flexible way so that both can 'survive', by sharing information about their interests and suggesting solutions to meet their mutual needs.

However, this highly formalised CB (s.2.2) exists on a smaller scale in current practice (it is less frequent in the world) than in the 1980s when these theories were first

developed because the power relationships between management and workers have changed significantly.

Even DR theories which support individual strategies (i.e. to act independently and maximise self-interests without collaborating with others), such as the 'equilibrium theory' (s.5.1), prohibit workers from reaching favourable bargaining outcomes for them. In such cases, workers negotiate for maximum wages, benefits and bonuses, but managers tend to yield as little as possible and maximise their profits at the expense of the former's payment and working conditions.

More specifically, in employment practice, an individual worker may follow the following ADR processes, that of mediation, arbitration and conciliation (s.5.2). The literature has shown that these processes are not ideal for workers, especially after the confirmation that TUs have stronger, multi-functional, bargaining and representational powers.

A worker who is involved in mediation will not able to resolve serious cases such as that of discrimination or harassment. Also, there is a possibility of failing to reach an agreement with management after long discussions, due to its voluntary nature and the non-binding outcome. Furthermore, the mediator's intervention in the process discourages workers' participation and any possible outcome is questioned as to whether it will benefit long-term employment relations. The mediator's upfront costs and disagreements regarding the choice of suitable mediator are additional issues to be considered by workers.

In arbitration, the outcome is determined entirely by an arbitrator/s (thus workers' involvement in the process is minimal) whose decision cannot be appealed and the remedies are legal. It is an expensive, lengthy and procedurally formal process compared to mediation and conciliation. Plus, the process is in favour of the employers, who are repeat playkateriners in the system.

In the case of conciliation, it is possible for a worker to be reluctant to accept the alternative scenario for the settlement of the ongoing dispute, especially when being under pressure to attempt this process because it is compulsory. It is also possible to be 'exploited' in the sense that if he/she addresses the ETs (the last resort) (see Chapter 6),

it is expected that management will already have notice of his or her weaknesses during the process.

In all the above analysed DR processes, except for the absence of mobilisation, there is also lack of collective representation. Hence, there is a need to continue exploring how workers experience the transition from workplace to extra-workplace environments (discussion follows in s.6.1). Particularly, there is an interest in investigating the ET system because it was introduced as an out-of-court alternative to individual workers. A complete evaluation of the ET system after a thorough examination of the ET system (past to present) and a detailed assessment of the current legislative changes (in 2012, 2013 and 2014) follow in the next chapter.

To do this, namely, to see how a worker experiences the ET system (see s.6.3-6.4 below), and whether there are any favourable conditions and outcomes in such environments (s.6.5), the most appropriate framework was employed in the study, that of Budd and Colvin (2008) (s.5.3; s.8.3). Hence, it was employed because it is the only model so far which consists of three valid, broad and most complete metrics (equity, efficiency and voice) that have replaced other less specific measures, and is capable of comparing and evaluating existing justice employment systems in relation to others.

Chapter 6: ALL ABOUT THE ETS

In the previous chapter, the existing DR theories and processes, the alternatives to mobilisation, were discussed. It was concluded that none of the conditions described in the four key DR theories can be applied in current employment practice and none of the three ADR processes is the ideal choice for workers. It was also justified why Budd and Colvin's framework has been employed for the evaluation of the ET system, the last resort that may help workers to resolve their disputes.

In this chapter, a detailed analysis on how workers move procedurally from the case of unfair dismissal to the ETs will be presented. Closer attention is paid to to the recent legislative changes in the ETs and comparisons are also made as to how the system was in the 1970s and how it is now in 2015. Additionally, the literature on workers' tribunal experience is explored.

6.1 The transition from workplace voice processes to the ETs: the case of unfair dismissal

The chapter starts with a brief discussion of the most serious case that occurs in employment practice, that of UD, when there are implications that an employee's job is terminated due to unlawful, unjust and unreasonable treatment by his or her employer. The present chapter describes the real situation that workers are about to face within the unionised workplace and when their dispute is still in the form of grievance and examines what happens when the resolution of the worker's grievances is not feasible and he or she resorts to the ET system either because there is a breach of contract or discrimination, or dismissal, redundancy and so on.

All workplace voice processes, namely, the open door policy, the peer review, the internal ombudsman, and the grievance process, are procedurally less formalised and codified (apart from the latter); therefore, as all these processes are user-friendly compared to the extra-workplace ET process, and give workers the opportunity to communicate their complaints confidentially at an early stage of their occurrence, they are considered the most appropriate processes to prevent a workplace dispute from escalating (Secord, 2003;Van Gramberg, 2006). If workers are not satisfied, the grievance process is technically offered as the last resort within the workplace (Chandler, 2003).

When this stage is reached, UD cases are decided. In particular, a dismissal is deemed unfair if, for instance, the employer does not follow the disciplinary process (see below) or refuses to take the employee back after a strike with duration of 12 weeks or less (Employment Rights Act 1996; CAB, 2014). The same is true in the case where the employee resigns under pressure from his or her employer or goes on maternity/paternity or adoption leave and the employer refuses to allow him/her back into the workplace (Employment Rights Act 1996; CAB, 2014).

Therefore, if an employer has a formal complaint about his or her employee's work or behaviour, then he or she may decide to start a disciplinary procedure under its rules that are contained in the terms of employment or staff handbooks. Nevertheless, it is possible to solve the problem informally at first (not always), if it is believed that there is a misunderstanding or a minor issue and clarifications are needed. If they take disciplinary or dismissal action, both parties must conform to the ACAS Code of Practice (COP) (2009), which sets the standards about grievance and disciplinary processes as well as embodies the principles of natural justice, when the latter provide a standard of reasonable behaviour. However, this does not apply to redundancy dismissals or to the non-renewal of fixed term contracts on their expiry (para. 1 of the COP).

More specifically, the process starts when a worker sends a letter with the details of the complaint to the employee after a thorough investigation and states what is expected in terms of standards of performance and conduct (para. 9 of the COP). Then it is the employer's responsibility to arrange a meeting at a reasonable time and place to discuss the issue with the worker; the latter has the legal right to be represented by a colleague or a union representative after submitting a 'reasonable' request to his or her employer who is obliged to notify him or her of that right (paras 11, 13, 14, 15 of the COP). Although the COP expands on this right, nothing in the legislation entitles employees to be accompanied by an external third party (CIPD, 2010).

At the end of the hearing, the worker should be informed in writing about company's final decision (para. 17 of the COP). It is important to mention here that no worker is generally dismissed for a first offence unless it amounts to gross misconduct or was the first in a sequence of repeated offences, so that a final written warning will be given (paras 19, 22 of the COP). In any case, the worker should be informed about the

duration of the warning (up to 12 months) and the consequences of further misconduct or failure to improve his or her performance in the given period (para. 20 of the COP).

The worker has the opportunity to appeal within a reasonable time, if he or she disagrees with the decision, by referring to the grounds in writing (for example, due to procedural irregularity, new evidence); in that case, the employer has to arrange a further meeting (para. 25 of the COP). However, the manager who has imposed the sanction, such as a verbal, first written or final warning, verbal or written suspension with or without pay, transfer to another task, demotion, dismissal, cannot be the person who hears the appeal (UnionConnect, Accessed 19/7/2014).

On the other hand, unlike the disciplinary process, a grievance process starts when a worker lodges a grievance (paras 31-43 of the COP). Grievances may refer to changes in terms and conditions, excessive workloads, being refused holidays or the discriminatory treatment by managers (Lewis, 2010). A grievance may precede a resignation and a possible claim for constructive UD, namely, when the worker is forced to leave the job against his or her will due to the employer's conduct (for example, the employer does not pay or suddenly demotes the employee for no reason or lets other employees harass him or her) (Employment Rights Act 1996).

Particularly, an aggrieved worker may complain to a line manager verbally in an informal meeting (optional stage) (Lewis, 2010). If, after the private meeting, there is no agreement, the employer should arrange a formal meeting without unreasonable delay (para. 32 of the COP).

The worker is allowed to be accompanied by a fellow worker, a TU representative, and an official employed by a TU after a request (para. 35 of the COP). This right arises from s.10 of the Employment Relations Act 1999. A worker can complain to an ET if he or she is not allowed to exercise this right and the tribunal can award compensation of up to two weeks' pay. Overall, the process becomes relatively intimidating when the worker has no representative (Lewis, 2010).

After the cross-examination of both sides' witnesses, a decision is made. If the grievance has not been satisfactorily resolved, he or she can appeal in writing (para.39 of the COP). According to para. 44 of the COP, if a worker raises a grievance during a

disciplinary process, the latter process should be temporarily suspended to deal with the grievance first.

A worker may not initially intend to take legal action; however, if he or she is not satisfied with the unresolved work situation, he or she may have to decide whether to bring a claim in an ET. An evaluation of the ET system follows in s.8.3, using Budd and Colvin's framework (as discussed earlier in s.5.3). In both cases (disciplinary or grievance process), a tribunal claim may be pursued by the worker when he or she has two continuous years of service, within three months of the date of dismissal (three calendar months less one day) (CAB, 2014). In the foreword of the COP, it is mentioned that an ET has discretion to increase or reduce a worker's compensation by up to 25% in any successful case for UD and discrimination, when either party unreasonably fails to follow the COP.

Below, Figure 6.11 graphically depicts how both internal employment voice processes function in practice.

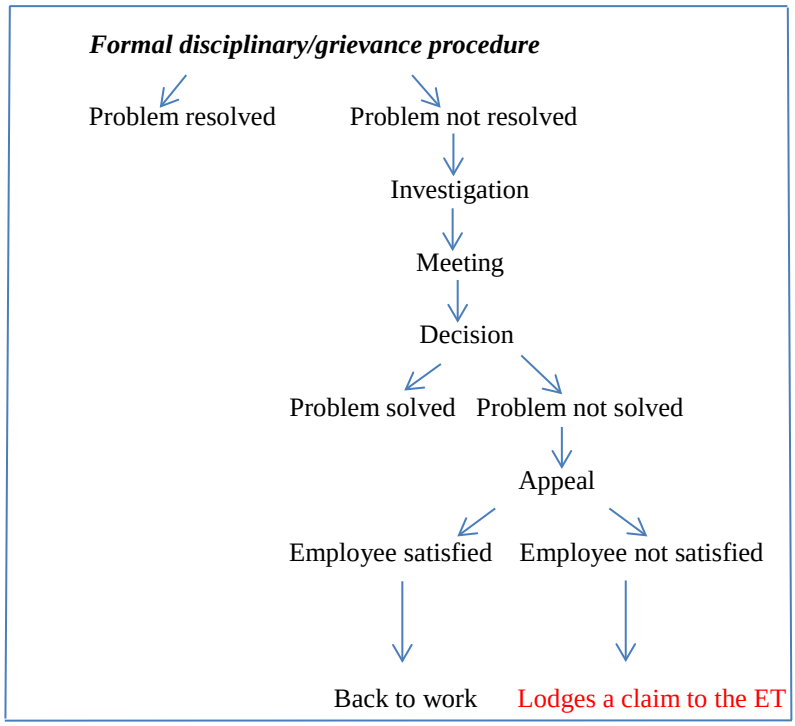

Figure 6.11 Disciplinary and grievance procedure: From workers' side (Source: Author)

In addition to the above, Figure 6.12 below summarises all typical stages that workers follow to settle their disputes with management when a) there is possibility for mobilisation and b) when mobilisation is absent.

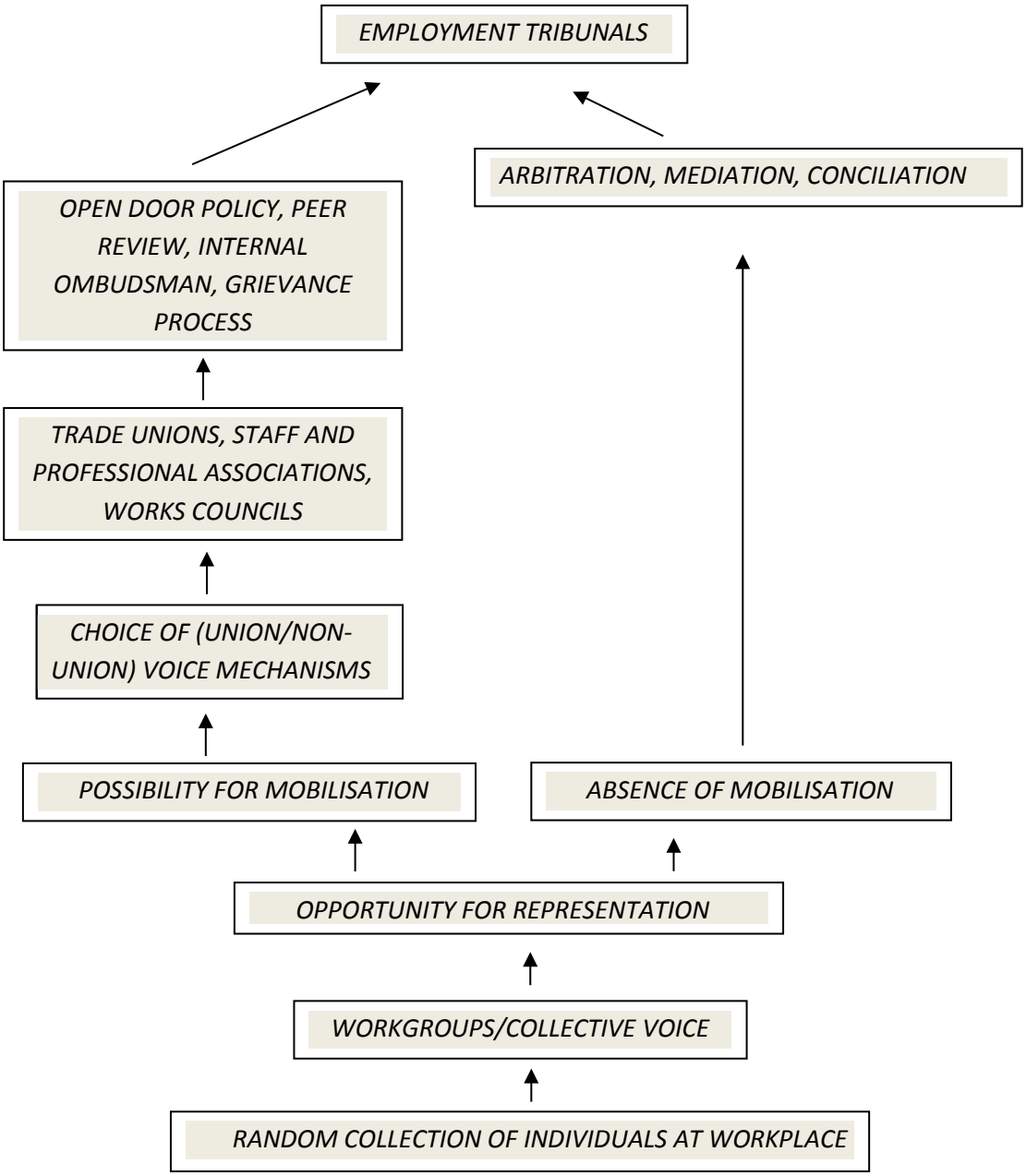

Figure 6.12: Typical stages to settle an employment dispute (Source: Author)

As it is important to discern the reality of the situation within extra-workplace environments, it is necessary to have an insight into the origins of the ETs and the underlying aims of the system. In particular, the features of the ET system need to be identified to reach conclusions as to whether there are any beneficial conditions for workers and whether the workers' position has improved since the 1970s (see below).

6.2 Background and outline of the ET system

The ETs are considered "a distinctive feature of the British system of administrative law" (Harding and Garnett, 2011, p.4). According to s. 1 (1) of the Employment Rights

(Dispute Resolution) Act (ERDRA) 1998, the tribunals, formerly known as 'Industrial Tribunals' are now called 'Employment Tribunals'.

The ETs were originally set up under the Employment Training Act of 1964 to hear appeals from industrial training levy assessments imposed by Industrial Training Boards. Subsequently, to determine whether someone is entitled to a redundancy payment under the Redundancy Payments Act 1965, to resolve disputes when an employer fails to provide a written statement of terms and conditions of employment, hear appeals under the Selective Employment Payments Act 1966, and determine whether work was 'dock work' for the purposes of the Docks and Harbours Act 1966 (MacMillan, 1999, p.34; Redman and Wilkinson, 2002; Hunt, 2006). In short, their functions were strictly limited. Before that, workers' duties, obligations and rights were protected under the common law and the only legal recourse was either in a county or high court (Peters *et al*., 2010).

In 1968, the British Government appointed a Royal Commission on Trade Unions and Employers Associations under the chairmanship of the Right Honourable Lord Donovan to:

> *consider relations between managements and employees and the role of trade unions and employers' associations in promoting the interests of their members and in accelerating the social and economic advance of the nation, with particular reference to the law affecting the activities of these bodies and report.* (Donovan Commission, 1968, p.686)

The resulting Donovan Report (Cmnd 3623) (1968) provided a significant inquiry into the system of collective UK labour relations. It inaugurated a period of state experimentation in the review, reassessment and reform of British industrial relations and the widespread perception that there was a problem of unofficial strikes (Kahn, 1983). The members of the Donovan Commission, believed that it was the lack of appropriate procedures that was the cause of many disputes because Britain lacked firm-level IR institutions of collective regulation since much attention was on industry-level bargaining. Therefore, there was a plan to encourage the decentralisation and proceduralisation of bargaining inside the firm, by recommending more formal collective agreements at plant level, more formal procedures to govern grievances, union organisation, a reform of payment systems and so on (Mcllroy, 1995).

Nevertheless, despite observing that when:

> *properly conducted, collective bargaining is the most effective means of giving workers the right to representation in decisions affecting their working lives, a right which is or should be the prerogative of every worker in a democratic society* (Donovan Commission, 1968, para. 212),

the Royal Commission insisted on the need for legislative protection of certain individual rights (in particular against UD), but most importantly on the creation of a system which would bring disputes into the legal sphere (Wrigley, 1997).

According to the report (Donovan Commission, 1968, p.155, para. 573), there should be 'labour tribunals', industrial juries of lay members which would deal with:

> *all disputes arising between employers and employees from their contract of employment or from any statutory claims that they may have against each other in their capacity as employer and employee.*

The Donovan Commission supported the voluntarist tradition and the tradition of legal non-intervention (Banks, 1969). Beyond keeping legalism to a minimum (Hunt, 2006, p.5), the underlying purposes were to ensure that all claimants were treated on an equal footing and offer speedy, informal and easily accessible services with no fees to those involved in an employment dispute, especially for non-union members (Donovan Commission, 1968, p.157; Daniels, 2004; Upex *et al*., 2009; Fafinski and Finch, 2009).

The section below describes analytically how much the ET system has procedurally changed since 1968.

6.3 The current nature of the ET system

Today, the ETs deal with a number of claims arising from Acts of Parliament and statutory instruments; these are governed by the Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014/254[35] which apply in England, Wales and Scotland.

[35]As amended by the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2013/1237, the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2012/468, the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2008/3240, the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004/ 1861, the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2004/2351, the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) (No.2) Regulations 2004|/1865, the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001/1171, the Employment Tribunals (Constitution and Rules of Procedure) Regulations 1993/ 2687 and the Employment Tribunal Act 1996.

Compared to traditional courts, the ETs have restricted statutory jurisdiction over a range of claims between an employer and an employee, such as inappropriate behaviour, wage and hour violations, claims of statutory violation, breach of contract in relation to termination of employment, UD cases, unauthorised deductions, disability discrimination, race or sexual discriminations, age discrimination, and redundancies (Cownie *et al*., 2007). It is argued that:

> *the idea inspiring the ET system was that by taking individual disputes away from industrial bargaining, and making them the preserve of the courts, unions would be weakened* (Renton, 2011, online).

The ET process begins after an early conciliation (see above s.5.2) is attempted, and a certificate number is given to claimants. The claimants must be prepared to face a confusing, complex and rather difficult procedure which requires patience, readiness and much careful preparatory work and alertness if they are acting on their own, and be obliged to pay fees. A 15-page ET1 form needs to be completed on paper or electronically and sent strictly within three months of the employment ending to the ET central office situated in Leicester for England and Wales or in Glasgow for Scotland, upon receipt of a notice of acknowledgment. The claim is accepted once the application has met the statutory requirements and the jurisdiction under which the case will be heard. At the same time, a copy of the ET1 form is sent to the respondent together with a blank tribunal form (ET3) on which he/she is required to 'respond' to the claim within 28 days after the receipt of a copy of an ET claim. Similarly, a copy of the response is sent back to the claimant.

If conciliation fails or does not take place, once a claim is received and the response is accepted, it is possible a tribunal judge to initiate a case management discussion (CMD). This is an informal hearing before the main hearing of the case that may be conducted in person or by telephone (through a central conference call system). The judge assists the disputing parties in arranging the period of the exchange of relevant documents (e.g. the statement of agreed facts, the statement of issues, the witness statements), explaining how the full hearing will be heard and ensuring an agreement on the date and length of the hearing (Davies, 2011; Holland *et al.*, 2015). This discussion may also be requested by the parties at any stage in the proceedings.

Furthermore, a preliminary hearing[36] can also take place, if requested by the parties or initiated by the tribunal, with the aim to discuss interim (preliminary) matters such as whether part of the claim or defence is to be struck out, or whether the claim is out of time; if there is no 'reasonable chance of success', a payment of a deposit of maximum £1,000 (from £500) can be ordered as a condition of being allowed to proceed with their claim, considering their ability to pay (s.39 (1) of the Tribunal Procedure Rules 2013; Edge, 2003; Chandler, 2003; Bowers, 2012). Hence, it seems that 'justice' is dependent upon fees. Additionally, the tribunal may also ask from the claimant or the respondent if not asked previously for a schedule of financial losses he/she may have suffered (Davies, 2011).

Below, the final possible alternative outcomes in a tribunal case are summarised (Table 6.4). These partly depend on the jurisdiction being invoked and can be communicated either at the same or a later date, with or without the summary reasons (Daniels, 2004; Upex *et al*., 2009; Harding and Garnett, 2011).

Table 6.4: Final alternative ET determinative outcomes (Source: Author)

*Dismissal of application because it is not in the scope of legislation or because it was found in a preliminary hearing that there was insufficient evidence to progress the case OR
*Withdrawal of application by the claimant OR
*An ACAS settlement (COT3) reached by the parties, where ACAS is involved in ratifying the final settlement OR
*Private settlement or a legally binding settlement agreement that parties reach OR
*Uphold the claim. The Tribunal orders (financial) compensation to be paid by the employer or in some dismissal cases, the employer gives the employee his/her job back (known as reinstatement order) OR
*Dismissal of application by the ET. The claimant can ask the Tribunal to review its decision on limited grounds or otherwise appeal to the EAT OR
*Struck out [part or all of] a claim (or response) on the grounds that it is scandalous, or vexatious or has no reasonable prospect of success, or the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent … has been scandalous, unreasonable or vexatious, or of non-compliance with an order or practice direction, or it has not been actively pursued, or the employment judge/tribunal considers it is no longer possible to have a fair hearing OR
*Default judgment where no response to the claim has been submitted within the 28 day time limit or the submitted response has failed to meet the pre-acceptance conditions

Lastly, the diagram below (Figure 6.13) briefly illustrates the current route that a worker has to follow if he or she has to lodge a tribunal claim. This graph verifies how

[36] The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 replaced CMD and pre-hearing reviews with preliminary hearings (s.53 (1)).

procedurally complicated this system appears to a worker, especially when unsupported by unions or other professionals and experts. This raises the question of whether workers (both members and non-members) receive enough information and consultation from the TUs before reaching this point. Probably, the lack of briefing as to the possible alternatives in settling an employment dispute before entering the ET system leaves the workers fully uncovered and unprotected.

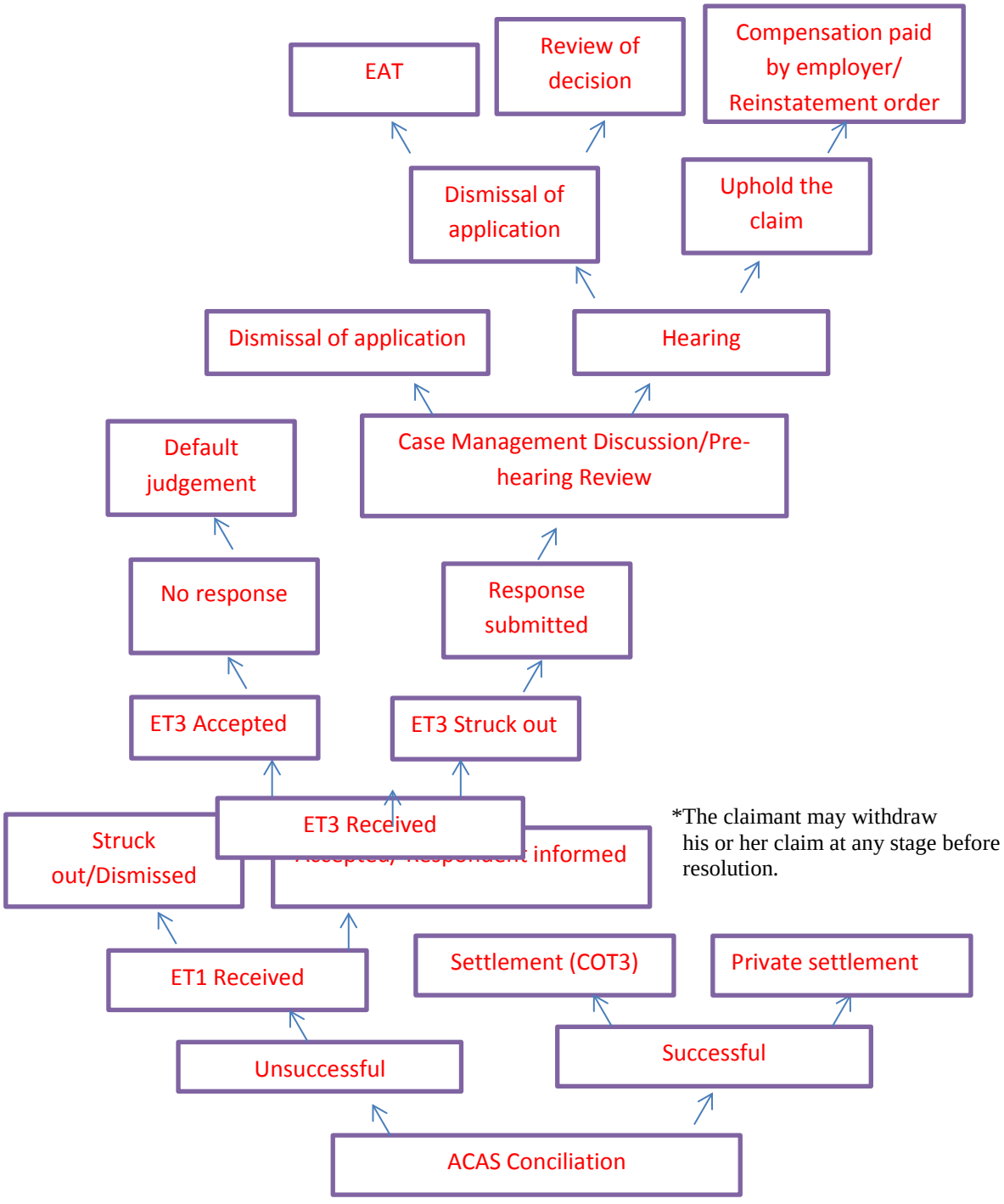

Figure 6.13: Summary of the tribunal process (Source: Author)

Before discussing the latest changes on the UK ET system, it is worthy to see how similar other systems that exist both in European or non-European countries work. For instance, similarly to the UK ET system, Brazil, Luxemburg, France [Conseils de Prud'homme], Germany [Arbeitsgerichte], Austria [Arbeits- und Sozialgericht], Sweden [Arbetsdomstolen] and Spain [Juzgados de lo social] have specialised labour courts/tribunals that deal with individual workplace conflicts (Risak, 2010; Cambridge University, 2011). On the contrary, countries such as Greece, Bulgaria, Finland, Slovakia, and Denmark take individual employment rights cases to the 'ordinary' courts (Eurofound, 2015).

In New Zealand, under the Employment Relations Act 2000, employment tribunals (a combination of mediation and adjudication processes) were replaced by the new separate institutions: a) the re-established mandatory mediation services for early intervention; and b) the Employment Relations Authority, which is promoted as an inquisitorial tribunal charged with investigating employment disputes in a more proactive, informal, accessible way (McAndrew and Risak, 2013).

In Australia, workers may use the Fair Work Ombudsman (FWO), an independent statutory agency which provides information and advice, investigates complaints and enforces compliance with workplace laws (Australian Government, Accessed 14/2/2015).

Ombudsmen and labour inspectors can be found in Hungary, the Netherlands, Norway and Romania (Purcell, 2010), whereas central and east European countries (e.g. Estonia, Latvia, Lithuania and Poland) use non-judicial ADR mechanisms, the bipartite conciliation commissions, known as Labour Disputes Commissions (LDCs) (representatives of employees and employers) (Purcell, 2010).

Overall, it appears that there are various different ways to resolve individual employment conflicts within or outside Europe. Some countries have not changed the way they settle such conflicts at all and they continue addressing to ordinary courts, whereas other countries have established specialist tribunals with similar functions, as those described earlier in this chapter. Nonetheless, it is interesting that there are some countries which still support workplace or ADR mechanisms and prefer not to resort to tribunals or courts.

The following section examines in depth the changes that were recently introduced concerning the operation of the ETs to see whether there has been any significant change in the workers' position in this extra-workplace justice system.

6.4 The ET system after the 2012-2014 changes

6.4.1 Overall picture

The first drafted ET changes came into force on the 6th April 2012 under the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2012, the Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 2012. On the 29th July 2013, further changes came into force under the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, the ERRA 2013 and the Employment Tribunals and the Employment Appeal Tribunal Fees Order (No. 1893) (2013). Lastly, on the 6th April 2014, some more changes came into force under the Employment Tribunals Regulations 2014.

Bogg and Keith (2013) stated that the UK is 'a rogue state' when measured against the 'modest yardstick of international human rights law'. Some of those radical changes that disadvantage workers are, for instance, a convenient solution for employers to facilitate the 'exit' at an early stage[37] of under-performing employees before a complaint of an UD (s.23 of the ERRA 2013), the introduction of 'employee shareholder/ownership contracts' scheme[38] or changes[39] in the Equality and Human Rights Commission (EHRC) (Bogg and Keith, 2013; Levinson, 2013; PCS, 2013).

Sections below provide an analytical discussion of the key legislative changes in the new tribunal process, starting from one of the most significant changes, the introduction of tribunal fees.

6.4.2 Fees and other expenses

Until recently, it was implied that an (ex) worker might follow the ET procedure because he or she could save the expenses of the 'ordinary' courts, where the cost and

[37] This was known as 'compromise' agreement. Now, it has been renamed as 'settlement' agreement, the 'protected conversation'.

[38] i.e. to allow workers to give up their workplace rights in return for at least £2,000 shares

[39] i.e. if Government plans to cut Commission's budget by 68%, then there is a danger of closing its helpline to the public, losing more than half of its workforce, losing its regional offices, ending its grants to charities or projects disability groups and community organisations

inconvenience weigh heavily on him or her (Davies, 2011). In practice, workers cannot bring and pursue claims in the ETs without being charged with the following fees: the *issue fee* that is paid when they submit their claim or appeal, and the *hearing fee* in advance of the hearing (as introduced by the Employment Tribunals and the Employment Appeal Tribunal Fees [Amendment] Order 2013). The fee payable depends on the type of claim (Type A or Type B claim) (Table 6.5). In the 'Type A Claim' category, claims which require little or no case management work or low value claims such as breaches of contract, unauthorised deductions from wages, unpaid wages, redundancy payments, holiday pay (for claims presented before 6.4.2014) are allocated (Ministry of Justice, 2012a; HM Courts and Tribunals Service, 2015b), whereas in the 'Type B Claim' category, more complex, encompassing lengthy claims for UD, discrimination, whistleblowing claims and equal pay (for claims presented after 6.4.2014) are allocated (Ministry of Justice, 2012a; HM Courts and Tribunals Service, 2015b). The fees are also payable in relation to appeals (Table 6.7). Different fees are payable for multiple claims, depending on the number of claimants (Table 6.6). Other relevant fees are illustrated in Table 6.8 at both levels. Hence, it is questioned whether claimants will be able to pursue their claims as well as whether TUs can support those workers who are struggling financially.

As noticed by Professors McDermont and Busby from the Universities of Bristol and Strathclyde, the fees are far higher than the £60 currently required in the county court and their introduction has severely limited access to justice for workers (University of Bristol, 2014). More specifically, they stated that "such a sharp decrease in cases has profoundly worrying consequences for the future of employment law" and "the imposition of fees has been the final straw for some claimants" (University of Bristol, 2014,online). In addition, no evidence was found to support that those fees were introduced because "a high number of unfounded cases were causing backlogs in the system, costing employers money and preventing job creation" (Busby and McDermont, 2014,online). What is more, the imposition of the fees has led claimants towards finding ways to finance their cases rather than resolving their disputes (Busby and McDermont, 2014). The difficulty of finding resources to support complex fee waiver claims also oppresses advice agencies which try to support these (Busby and McDermont, 2014).

Table 6.5: Official costs to claimants in ETs - Single claims (Source: Pyper and McGuinness, 2015, p.7)

Fee Type (paid by claimant)	Issue fee	Hearing fee	Total (if hearing fee paid)
Type A Claim	£160	£230	£390
Type B Claim	£250	£950	£1200

Table 6.6: Official costs to claimants in ETs - Multiple claims (Source: Pyper and McGuinness, 2015, p.8)

Multiple Claims	**Number of claimants**		
Type A Claim	**2-10**	**11-200**	**Over 200**
Issue fee	£320	£640	£960
Hearing fee	£460	£920	£1380
Total	£780	£1560	£2340

Multiple claims	**Number of claimants**		
Type B Claim	**2-10**	**11-200**	**Over 200**
Issue fee	£500	£1000	£1500
Hearing fee	£1900	£3800	£5700
Total	£2400	£4800	£7200

Table 6.7: Official costs to claimants in EAT (Source: HM Courts and Tribunals Service, 2014, pp.2-3)

Fee Type (paid by appellant)	Issue fee	Hearing fee	Total (if hearing fee paid)
EAT fee	£400	£1200	£1600

Table 6.8: Other tribunal fees (Source: Pyper and McGuinness, 2015, p.8)

	Reconsideration of a default judgment	Application to dismiss following withdrawal	An employer's contract claim made by way of application as part of the response to the employee's contract claim	Reconsideration of a judgement following a final hearing
Type A Claim	**£100**	**£60**	**£160**	**£100**
Type B Claim	**£100**	**£60**	**-**	**£350**

Before the introduction of the new ET fees, the Ministry of Justice (2012a) confirmed that such plans were about to be enforced to remove some of the financial burden of the tribunals from the taxpayer to the users of this system. However, what about the users of the tribunal system, especially the claimants, who have to pay these various fees themselves? How can justice be expected by claimants when at the outset of the process they have to pay all these fees, especially when they are running out of money due to their current employment status and implicitly being deprived of the right to exercise their employment rights?

The arguments against the introduction of fees brought by UNISON (2014)[40], one of the largest unions in Britain, in the judicial review are also quite interesting, despite the fact that were dismissed. Specifically, UNISON (2014, online) argued that:

- even if claims are successful, a reasonable person would not litigate to vindicate his or her EU rights if the fees are greater than the expected compensation, the likely costs of proceedings outweigh the benefits
- "it is a breach of the principle of equivalence to require significant fees to be paid to vindicate EU rights where no fees are required to vindicate similar rights derived from domestic law"
- it is does not seem 'a proportionate means of achieving a legitimate aim' if women who pursue claims for indirect discrimination are charged these 'prohibitively high' fees, considering that they cannot be entitled to any remission as they earn an average income and
- there is no proper assessment of the 'public sector equality duty' of the potential adverse effect of fees (in terms of the numbers and proportions of claims) to individuals with protected characteristics.

Moreover, this change comes at a time when workers' living standards are falling or are constrained and their income has not kept pace with inflation latterly (Kersley *et al*., 2013). This sharp 'squeeze' is mainly experienced by workers on low and middle incomes (Figure 6.14) (Kersley *et al*., 2013, p.8; Whittaker, 2013).

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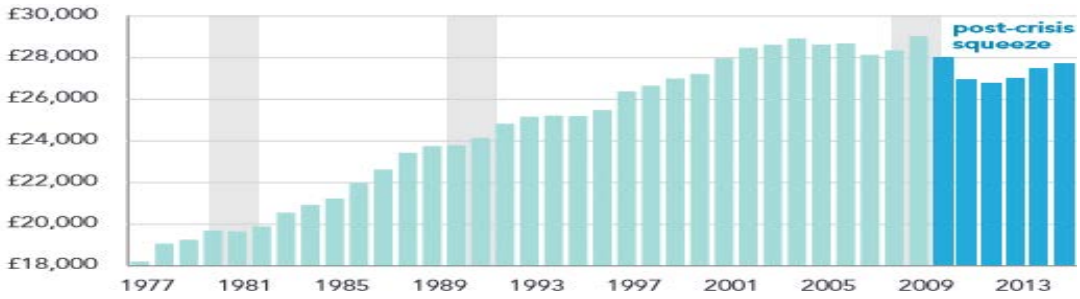
[40] R (Unison) v The Lord Chancellor and Anor [2014] EWHC 218 (Admin): The applicant, a union, challenged the policy on four principal grounds:1) the requirement to pay fees violates both the principle of effectiveness as it is virtually impossible, or excessively difficult' to exercise rights conferred by EU law and 2) it also violates the principle of equivalence as the level of fees 'are less favourable than those governing similar domestic actions' 3) the Lord Chancellor had acted in breach of the Public Sector Equality Duty in making the Order 4) the relevant Order was 'indirectly discriminatory and unlawful'. The High Court dismissed the claim. The union began a second judicial review after 'new evidence' appeared to show 'a huge drop in tribunal claims'. The High Court dismissed it by saying that the union had not been able to provide evidence of 'any actual instances' of individuals that had been prevented from making a claim by the introduction of fees. The union was later granted permission to appeal against the decisions of the High Court refusing its two judicial review applications. The Court of Appeal claim was stayed to allow a second High Court challenge. The union brought its second judicial review challenge against the Lord Chancellor over ET fees, which was unsuccessful despite 'the striking and very dramatic reduction in claims'. Today, the union is unsuccessful at the Court of Appeal and an application for permission to appeal to the Supreme Court has been made.



Notes: Controlled for Retail Price Index (RPI) inflation. Post-crisis projections calculated on the basis of the Office for Budget Responsibility (OBR) March 2012 forecasts for RPI and average earnings. RPI is an inflation measure for the analysis of wage and income trends

Figure 6.14: Gross median weekly earnings under inflation measure (Office for National Statistics [ONS], 2014 (a), (b) and Office for Budget Responsibility [OBR], 2014)

If claimants fail to pay upon the presentation of the claim, then their claim will be struck out (see above Table 6.4) due to non-payment, unless they are eligible for fee remission of all or part of fees; namely, a fee exemption/waiver that is applied under exceptional[41] circumstances and is subject to a disposable capital test[42] and a gross montly income[43] (Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013, Schedule 3). Therefore, if the ET1 form (s.6.3) is not accompanied by a remission application, their claim will be rejected. For these reasons, claimants have to confirm that they have either enclosed the appropriate fee or an application for remission. They also need to state in advance whether the claim is made on behalf of more than a person, since in multiple claims, the fee payable will depend upon the actual number of claimants.

In relation to this, workers' claims are threatened to be struck out where the employment judge sees that there is 'no reasonable prospect of success' or that the claim is otherwise 'an abuse of the system' or the tribunal has no jurisdiction to consider the claim in the 'sift' stage in which workers can review the merits of the

[41] i.e. workers are unemployed or on very low income

[42] For instance, to get full remission on a fee of less than £1000, a single person with no children would need disposable capital below £3000. However if the claimant or their partner is aged 61 or over, there is a higher limit of £16,000.

[43] Remission 1: Claimants get full remission on a fee if you receive certain benefits (e.g. income-based jobseekers allowance, or Universal Credit with gross annual earnings of less than £6,000). Thus, a letter from the Department of Work and Pensions is needed.
Remission 2: Claimants may receive either full or part remission based on their gross monthly income (e.g. for a single person without children the limit to get full remission of fees is £1,085. Up to a certain level the claimant then pays £5 of fee for each £10 above the monthly limit). A financial evidence for both the claimant and any partner is expected.

claim in an earlier stage of the proceedings (Rules 26-28 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013).

Moreover, the tribunal has the power to award costs (*cost orders*) of £20,000 against the party or representative who has failed to comply with tribunal orders or has acted "vexatiously, abusively, disruptively or otherwise unreasonably or the bringing or conducting of the proceedings by any party has been misconceived" (Rules 74-84 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013) or an unlimited amount determined by way of a detailed assessment in the county court (Rule 78 (1)(b) of the Employment Tribunals Rules of Procedure 2013).

It is usually implied that workers are the vexatious litigants who have to think carefully before initiating their weak claims or who have brought them for improper purposes. Thus, such orders introduce an extra risk to them.

Lastly, an additional financial burden is imposed on claimants, particularly disadvantaging unemployed or low-paid workers, when they have to cover any witness expenses funded by the state until recently (Rule 2 (4), (5), (6) and (7) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2012).

Workers need also to consider many other factors before filing a claim; namely, the cases where the employers fail to pay up when they lose, normally because the company no longer exists/is insolvent or the employer refuses to pay, especially when the worker is unrepresented. This should be set against the fact that many workers do not receive the minimum wage when they claim it (Croucher and White, 2007).

According to Government research, entitled *Payment of tribunal awards study 2013*, it was revealed that only 49% of claimants were paid their ET award in full. The remainder were either paid in part (16%) or did not receive any money at all (35%) (Department for Business Innovation and Skills [BIS], 2013b). Of the latter:

- only around half succeeded in receiving some or all of their payment because they were aware of the option of enforcement[44]

[44] i.e. through fast track scheme [England/Wales] or county court direct [England/Wales] or the engagement of a sheriff's officer [Scotland]

- over half (53%) received full or part payment without resorting to enforcement
- 58% (compared to 53% overall) were likely to receive payment after consultation with their lawyers and unions, without resorting to enforcement (BIS, 2013b).

In a case where a worker wins a claim for UD (see s.6.1 above) would receive a maximum compensation award of £78,335 or 52 weeks' pay. In addition to this, he or she is also entitled to a basic award (max. £14,250) which is calculated based on a week's pay (£475) (Employment Rights (Increase of Limits) Order 2015). However, this cap does not apply where the UD is for whistleblowing or for raising certain health and safety issues. Also, proven losses may not be reimbursed, even when the employer has behaved unlawfully.

On the 6th April 2014 and under s.16 of the Enterprise and Regulatory Reform Act 2013, introducing s.12A into the Employment Tribunals Act 1996, the Government decided that the ETs can levy a financial penalty against those employers who are in breach of their employment rights if the breach has one or more aggravating features.[45] Recently, according to the Small Business, Enterprise and Employment (SBEE) Act 2015 (Part 2A, s.37 (A)-(Q)), the process changed because an enforcement officer, rather than the tribunal, issues a 'warning notice' by stating that unless the sum due is paid within 28 days a financial penalty (minimum £100 to maximum £5,000) will be imposed. If the sum due is not paid within that period, then a 'penalty notice' is issued that requires the employer to pay a financial penalty equivalent to 50% of the original award to the Secretary of State. If the employer, within 14 days, then pays both the original award to the claimant and the financial penalty to the Secretary of State, the financial penalty is reduced by 50%.

Thus, workers should consider the prospect of winning, the likely remedy, whether they have sufficient savings to cover some of the expenses, but most importantly the costs for their tribunal representation and other expenses, for example, photocopying, travel and communication and so on. The BIS (2012) published a brief estimation of the median costs (per case) incurred by claimants in a tribunal process in relation to the final outcome of their case (at 2012/13 prices) (Table 6.9). Once again, it is shown that

[45] i.e. deliberate action or conducted with malice, repeated breaches, the employer is a large organisation with a dedicated HR team

resorting to the ET system would be a difficult decision for workers because they have to bear in mind the huge expenses and the fact that the issue and hearing fees are not included in the total sum.

Table 6.9: Summary of costs to a claimant from an ET application, by outcome (Source: BIS, 2012, p.12)

	Went to a tribunal hearing	ACAS settled	Privately settled	Withdrawn	Dismissed	Total
Time spent on the case	£714	£568	£636	£636	£908	£636
Costs for advice and representation post ET1	£1,017	£558	£1,026	£763	£134	£763
Costs incurred for travel and communication	£23	£20	£20	£22	£17	£21
Total cost	£1,754	£1,146	£1,682	£1,421	£1,059	£1,419
Total cost rounded to nearest £100	£1,800	£1,100	£1,700	£1,400	£1,100	£1,400

Based on the above table, two questions arise: a) How do workers benefit when they have to spend at least £1,000-£1,400 and they see their claim dismissed or they are forced to withdraw it while, with the same amount of money, they can achieve an amicable settlement via ACAS?; and b) Why go to a tribunal hearing (£1,800) if, for the same amount, workers can enter into private settlements with their employers (£1,700)?

Surely, 'justice' is called into question when the above list of factors is at the expense of claimants. Ex-employees who have experienced the ETs condemn this situation because they believe that they are prevented from bringing meritorious claims when they cannot afford to secure justice for themselves, since the new rules give the 'upper hand' to the employers (Parry, 2013). Conversely, if they manage to persevere with their claim (i.e. afford paying the issue fees and hearing fees), then they will likely be less willing to accept a settlement agreement with their employers.

Yet, the Government recently promised to review the impact of the introduction of fees in the ETs, by examining employment tribunal data on volume of cases, fee remissions, case progression and case outcomes; researching on the views of tribunal users; considering other factors that influenced trends in the number of cases appearing at ETs; and by making recommendations for any changes to the structure and level of fees

as well as for streamlining procedures to reduce costs (terms of reference) (Ministry of Justice, 2015d).

The next section discusses in what extent worker's representation in the ETs is affected after the introduction of the latest legislative changes with regard to this issue.

6.4.3 Tribunal representation

In relation to claimants' tribunal representation, the only available free of charge service is the Citizens Advice Bureau (CAB). CABs are of great help to workers, because they help in 'translating' the ET procedures into simple words and in filling in relevant forms. Unfortunately, workers have to confront their (ex) employers, the majority of whom are usually represented by the lawyers of the organisation, outside lawyers, consultants or other human resource managers (Busby and McDermont, 2012; Estreicher, 2005). However, the CAB service does not seem sufficient to cover all workers' needs because the CAB advisors cannot represent them in the actual tribunal proceedings. Essentially, workers would need further help from professionals who are aware of the ET system. Thus, the argument in favour of a cheap ET system, in the sense of self-representation without resourcing to paid legal services, no longer holds true. In this case, the ETs seem to exist for the benefit of lawyers whose work in other areas is being squeezed by the cuts to legal aid/state funding[46] (Bowcott, 2013), see also Table 6.14 below.

This becomes even harder for legal representatives who choose to offer their services for free. In particular, there are some registered agencies, such as the Free Representation Unit (FRU), the Bar Pro Bono Unit (BPBU) and the LawWorks, which provide free legal advice, case preparation, advocacy and representation from volunteer barristers in tribunal cases "for those who could not otherwise obtain legal support, for want of personal means or public funding" (FRU, 2009,online). The problem is that they receive applications only through advice agencies and solicitors and not directly from the public.

[46] Legal aid or state funding has never (and still is not) been available to the individual worker who addresses the ETs in England and Wales when there are insufficient resources to pay for his/her own legal representation; the only exceptions are in the case of the ETs in Scotland and the EAT where some or limited legal aid is provided (Grant, 2001, p.13; Emir, 2012).

What is also alarming is that the average number of claims (around 9,000) that ends up being handled by the TUs (union representation) (since 2008) out of the average number of total claims (around 156,000) is considerably lower compared to legal representation (106,000), self (31,000) or other types of representation (13,000) (Table 6.10)[47].

Table 6.10: Trends in representation of claimants at ETs (Source: Ministry of Justice, 2015b)

	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15
Trade union	6,246	9,533	28,614	8,426	11,111	10,069	5,998	5,995	3,282	3,496
Lawyers, solicitors, law centres, trade associations	67,928	79,611	117,979	86,816	165,102	152,825	129,137	136,858	74,862	46,223
Self-representation	30,158	31,569	31,159	40,355	42,677	35,726	33,878	34,676	21,304	7,842
Other	10,707	11,864	11,551	15,431	17,213	19,476	17,318	14,052	6,355	3,737
Total Claims	**115,039**	**132,577**	**189,303**	**151,028**	**236,103**	**218,096**	**186,331**	**191,541**	**105,803**	**61,308**

In the extra-workplace environment, if the claimant was a union member and his or her case is positively assessed as to its strength by the union and its solicitors, then he or she may be legally assisted in tribunals. UNISON that provides such services tried to present the main steps in the ET representation scheme protocol (published in 2013) that have to be followed to assist its union members. Initially, a branch secretary, the main contact person with the wider union, ensures that the case form has been filled in (i.e. member's contact, personal, employment, membership and case details), including the fee advance agreement and all financial information for potential remission of fees (UNISON, 2013a). Then a union organiser, an appointed or elected person who serves union members but also informs non-union members about their rights and the union organising process, makes an initial assessment (i.e. meetings with the member, collection of relevant paperwork[48]), before the nominated manager refers the case to the

[47] Based on the annual tribunal statistics provided by the Ministry of Justice (2015b)

[48] (i) A note from the Organiser explaining what the case is about, his/her view of the case, and all the steps that have been taken so far, highlighting any deadlines and time limits and a copy of the case printout up to that point;
(ii) the fully, and properly, completed case form which incorporates
(iii) the fully, and properly, completed and signed fee advance agreement;
(iv) the fully, and properly, completed and signed remission application.

legal representatives of the TU. These representatives assess whether the case has merit and decide whether there is a reasonable prospect of success (UNISON, 2013b); then they provide brief written advice and an offer for legal assistance (if any). Solicitors start acting on their behalf in the tribunal when an acceptance form is signed and returned, and a copy of the case form (containing the completed fees advance agreement) and the completed fees remission application are received (UNISON, 2013b). Once an issued case is listed for a hearing and before any hearing fee is paid, solicitors will provide the nominated manager and the head of legal services with a full written assessment of the merits of the case and a recommendation as to whether legal assistance should continue (UNISON, 2013b).

Unfortunately, due to the latest changes in the ET fees (as discussed in s.6.4.2), it seems that the TUs will be reluctant to support them all. The variety of costs not only deters claimants from pursuing their claims, but has the same effect on the unions. Because TU resources are finite, it is expected that the representation of workers will depend on whether there are sufficient merits to proceed and any individual benefits in pursuing the case. Many unions have publicly expressed their concerns, fear and anger about the destructive effects of the new legislative changes on workers.

Therefore, if claimants are not self-represented or financially covered by their motor/household insurance policy or supported by their TU because they were members at the time their employment ceased, it seems that they will most probably think of requesting a lawyer's assistance. For an approximate estimation of tribunal representation costs, the following factors must be considered: the type of their case, the preparation time, the volume and complexity of employment law, the length of the case, the extra preparation days before and after hearing, and any travel or any (post, telephone) communication expenses (Ministry of Justice, 2013b).

Statistics also show that females (16%) are slightly more likely than men (14%) to nominate a legal representative at the ET1 stage, whereas claimants from black and

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(v) An indexed bundle of all the relevant documents, such as the contract of employment, any relevant collective agreements, and copies of the correspondence;
(vi) Copies of all the pleadings if there are any at this point, that is to say any ET1 and any ET3, together with any correspondence with the Tribunal;
(vii) Preliminary and/or any other statements from the member and any witnesses where appropriate;
(viii) Any certificate from ACAS confirming that the case may be issued.

ethnic minority groups (13%) appear more reluctant than white claimants (even to receive support or advice at the application or post application stage) (16%) (Buscha *et al*., 2012). What is not surprising is that claimants with disabilities are much more likely to have high levels of representation across the ET process due to the relatively complex legislation (Buscha *et al*., 2012; Taylor and Proud, 2002; Woodhams and Corby, 2003).

The next sub-section discusses another legislative change regarding the composition of the tribunal. Unfortunately, three possible problems occur: a) whether in the case of the trial of UD claims, the hearing from a sole employment judge (instead of a full tribunal) is enough, b) whether the determination of straightforward ET cases by legal officers is acceptable by a worker, and c) whether the current usual characteristics of judges (i.e. gender, ethnicity) 'puzzle' some categories of workers (women, ethnic minorities) as to the final outcome of the case.

6.4.4 Composition of the tribunal

According to the new ET changes, the employment judge sits alone when hearing UD claims to strike out a case of vexatious nature, unless he or she directs otherwise. However, it is questioned why the tribunal panel is not necessary if UD claims are classified as complex cases (level 2) (see above s.6.4.2) and more attention needs to be paid. Unite the UNION (2012, online) supported that the underlying intention was "to banish TU panellists and others with industrial experience from sitting with judges, many of whom have no employment experience". The tribunal can be comprised of the chairman and one lay member, but only if both parties to the dispute agree on this (s.4 (1) (b) of ETA 1996). The chairman's vote is equal to that of his or her lay colleagues (Hunt, 2006). Thus, it is possible for claimants to request a full tribunal panel, but the majority is not aware of the existence of such right.

An additional issue is that according to s.11 of Enterprise and Regulatory Reform Act (ERRA) 2013, straightforward ET claims can be determined by 'legal officers' if parties agree in writing to promote rapid resolutions, without the need for a hearing; the decision can be of the same status as a judge-made decision.

As confirmed by the Judicial Office (2015), the majority of employment judges are men (3,098 out of 5,655) and white (4,413 out of 5,655) (Table 6.11). This may be considered an issue for women and ethnic minorities.

Table 6.11: UK courts judicial diversity statistics (Source: Judicial Office, 2015)

	Total in post	Gender			Ethnicity							
		Male	Female	% Female	White	Asian or Asian British	Black or Black British	Mixed	Any other background	Total BME	Unknown	% BME
Total Judges and non-legal members	**5,655**	**3, 098**	2,557	45.0%	**4,413**	417	100	63	106	686	556	13%

Lastly, there is a brief discussion about the possible risks that a worker may face because of the extent of the qualifying period for UDs (the final legislative measure).

6.4.5 Qualifying period for unfair dismissals

The ET system was initially proposed to serve as a time-efficient system (see s.6.2 above). However, the ETs have now a tendency to be procedurally similar to the courts, with many bureaucratic and lengthy proceedings to be completed. With the new changes, the qualifying period for UD claims has increased from one year to two years unless the reason for dismissal is automatically unfair (while in Northern Ireland the period is still a year); thus, it is possible for the employers to dismiss workers without any reason during that period and escape UD claims.

An employee relations policy adviser at the CIPD, Mike Emmont, stated that:

> *there is no evidence to suggest that extending the qualification period for an employee to claim unfair dismissal will have any significant impact on the number of claims brought against employers, let alone boost the economy by increasing employers' propensity to hire new staff.* (Woods, 2012, online)

The TUC reported that around 2.7 million of vulnerable workers -those who are normally engaged in temporary and part-time jobs (as those described in s.4.2.1, p.58), especially women and workers from black and minority ethnic (BME) communities, namely, who have been employed for more than one year but less than two years (15%) compared with the broader population (10%) across the UK,- could face an increased risk of losing their jobs as a result of the extended qualifying period (Dunstan and Ander, 2008; TUC, 2012; Busby and McDermont, 2012).Thus, due to 'hiring and firing' in the UK, workers may worry about experiencing job insecurity.

It is evident therefore that none of the changes to the ET system (s.6.4.2-6.4.5) encourage an individual worker to challenge his/her employers. It is apparent that they reinforce non-unionised and individualist approaches to employee relations and do not aim to protect workers' rights and interests. Having considered all the above factors in detail, it is very important to investigate further and identify whether there are any good reasons for workers to use the current ET system.

6.5 How optimal is the ET system for workers: The literature

First of all, the ET system might be advantageous to an individual worker because it results in a legally binding decision, as occurs in arbitration (as discussed in s.5.2 above) (Lewis and Sargeant, 2004; Lewis and Clark, 1993). The final decision of the employment judge, who is bound by rigid procedural formalities, is based on evidence and law.

Moreover, the ETs have a less formalistic approach than courts in the sense that there are no dressing formalities that need to be followed (i.e. gowns, wigs), the rooms are less imposing than courtrooms, and parties may receive some assistance from the employment judge, especially when unrepresented (Daniels, 2004; Kelly *et al*., 2005; Davies, 2011).

On the other hand, the ET system would not be optimal for workers because the decisions are rendered similarly to the court system, based on sets of rigid laws and statutes (Roberts and Palmer, 2005). Thus, it could be said that there is a tendency towards an increased degree of formality which reminds us of the ordinary litigation procedure (Edge, 2004, p.1).

In addition, the ET system appears to have become strictly a bureaucratic, determinative, confrontational process which allows competitive actions and behaviours as well as antagonism and animosity to prevail; for that reason, it is known as 'the adversarial system' or 'the winner-take-all process', in which one party is expected to lose, normally the worker (Carmichael, 2002; Moffitt *et al*., 2005; Mahony and Klaas, 2008; Law Reform Commission, 2010). This process is different from the win-win approach which is represented by more consensual and advisory processes such as those described in the 1970s; thus, it is common to end up with win-lose outcomes. In an adversarial process, each party "presses for an advantage at the expense of the other's interests" (Coltri, 2004, p.20).

Furthermore, the ETs are not the optimal option for a worker because the tribunal panel is an independent quasi-judicial body (s.6.4.4). Normally (except in UD cases), it consists of an employment judge and two lay members who have extensive experience in employment issues and are appointed by the Secretary of State for Trade and Industry. One is selected from a panel drawn up after consultation with organisations that represent employers, and the other from a panel of employee representatives (Mansfield *et al*., 2012). There is also a self-nomination process that seeks to attract women, ethnic minorities and people with disabilities (Emir, 2014). The legally qualified judge who oversees the process and is appointed by the Lord Chancellor will not be someone who will take the side of the worker, but a person who strictly follows the 'procedural agenda'[49] to make a decision.

Hence, based on the literature (s.6.2-6.4), there is an appearance of how much more formalised the ETs have become since 1968 (see Figure 6.15 below) and how sympathetic environments have become towards employers (Renton, 2009). Therefore, employment tribunal adjudication is a difficult and ineffective mechanism for workers (Lewis, 2013). An additional evidence could be the fact that for the first time the number of claims in 2014/2015 appears to be halved (61,000) compared to earlier years (Ministry of Justice, 2015c) (Appendix 1).

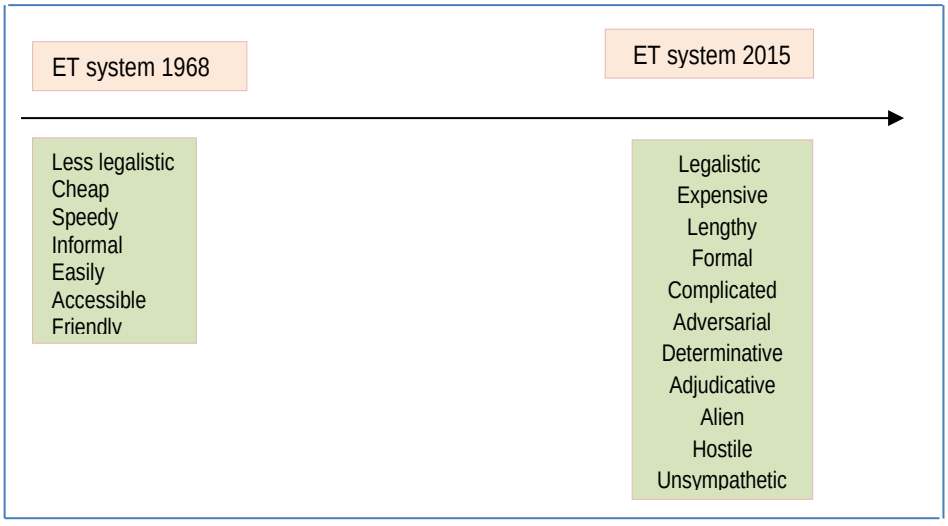

Figure 6.15: The formalisation of the ET system since 1968 (Source: Author)

Yet, apart from the literature, what do the annual tribunal statistics say about the oucomes of the tribunal proceedings in the last eight years now that some data are

[49] i.e. to ensure due process, to ensure that parties without legal representation are given full opportunity to present their case

available to public? Does the tribunal system benefit the workers in practice? Do workers win or lose when they enter the ET system?

Table 6.12: Trends in ET outcomes since 2007 (Source: Ministry of Justice, 2015a)

	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15
ACAS conciliation	29%	32%	31%	29%	33%	33%	21%	8%
Default judgment	4%	4%	7%	6%	6%	6%	3%	1%
Successful at tribunals	13%	13%	13%	12%	12%	11%	7%	3%
Withdrawn	33%	33%	32%	32%	27%	28%	48%	16%
Struck out	11%	7%	9%	10%	13%	12%	8%	67%
Dismissed at preliminary hearing	2%	2%	2%	2%	2%	3%	2%	0%
Unsuccessful at hearing	7%	8%	6%	9%	7%	7%	5%	2%

From the table above, it seems that conciliation settlements (s.5.2) achieved by ACAS (18%-33%) as well as withdrawal of applications by the claimants (27%-48%) are the most common tribunal outcomes throughout the years, whereas dismissals of applications at preliminary hearing are quite rare (0-3%) (Ministry of Justice, 2015a). More specifically, claimants may withdraw either because they are discouraged to proceed as a result of their poor health and highly emotional state (further discussion about their feelings about the ET system follow in s.6.5.1 below) or they are convinced by their legal representatives to settle with the employer prior to the ET hearing rather than continuing to it (which is what they mostly regret) or because of an unqualified or weak case (Fieldsend, 2013; Aston *et al*., 2006). It is disappointing that the rate of withdrawals of applications by claimants abruptly increased to 48% in 2013/14.

However, according to Buscha *et al*. (2012), claimants with no representation are significantly more likely to see their case dismissed, while claimants with the highest levels of representation are more likely to receive a (private) settlement (Table 6.6). It is also believed that the number of cash settlements will increase either because employers want to save money and time, by preventing employees from lodging a claim or to avoid the fees, fines (up to £5,000) and compensatory awards (see below Table 6.15) if they lose (Peacock, 2011). Alternatively, there may be fewer settlements as employers see if the worker has the money to fight at the ETs. From the workers' perspective, it is expected that the value of settlement offers (especially for low-value claims) will have to increase to be more attractive to them at a time when they are

prepared to pay the tribunal fees for lodging their claim (BBC NEWS, 2013b); otherwise, the number of settlements will drop significantly.

Hence, it is understandable that a vast majority of claims never reach a full hearing. We must keep in mind that approximately 17% of cases are struck out before a hearing. Particularly, in 2015, the rate of struck out cases increased to 67%. Only approximately 11% of the claims which reach the ET hearing are successful for the claimants. Besides, there are a few cases where claimants win due to respondents' failure to lodge a response within the 28-day time limit (nearly 2%).

Furthermore, as documented below (Table 6.13), in 2011/12 almost all the awards dropped significantly (close or below £10,000) in various discrimination cases compared to earlier years. Nevertheless, the awards in race discrimination cases show an upward trend (uptrend), reaching £100,000 in 2011/12, whereas religious and UD discrimination cases show a recent downward trend.

Table 6.13: Trends in average compensation amounts of ET awards since 2007 (Source: Ministry of Justice, 2015b)

	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15
Unfair dismissal	£8,058	£8,271	£9,120	£8,924	£9,133	£10,127	£11,813	£12,362
Race	£14,566	£33,026	£18,584	£12,108	£102,259	£8,945	£11,203	£17,040
Sex	£11,263	£11,061	£19,499	£13,911	£9,940	£10,552	£14,336	£23,478
Disability	£19,523	£26,023	£52,087	£14,137	£22,183	£16,320	£14,502	£17,319
Religious	£3,203	£33,937	£4,886	£8,515	£16,725	£6, 137	£8,131	£1,080
Sexual Orientation	£7,579	£21,709	£20,384	£11,671	£14,623	£10,757	£8,701	£17,515
Age	£3,334	£8,430	£10,931	£30,289	£19,327	£8,079	£18,801	£11,211

All figures indicate that there is no ideal extra-workplace world for a worker since the absence of union effectiveness and strong voice in representing the workers cannot ensure collective mobilisation, participation and action (s.4.1.1); the ideal for workers' conditions which occur only in a workplace setting (as thoroughly discussed in Chapter 4).

Based on the ADR continuum illustrated in *Business ethics: a stakeholder and management approach* (Weiss, 2008, p.54), Figure 6.16 below depicts the basic features of all available individual employment procedures (s.5.2; Chapter 6). Hence,

we see that the ETs are placed together with arbitration, litigation and county court, justice systems that are all court-style and adjudicative in character.

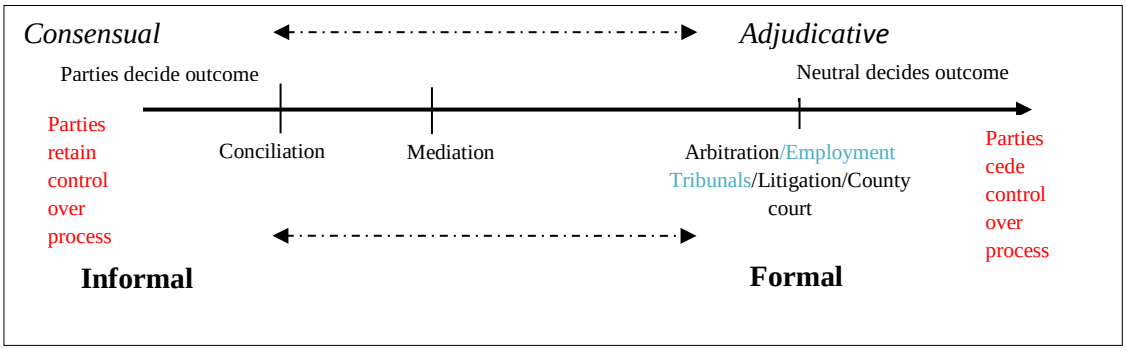

Figure 6.16: ADR continuum in employment - DR processes in post-employment (Weiss, 2008, p.54)

As discussed in Chapter 2, according to Mayo's (1946) major theoretical and experimental contribution, among the most fundamental underlying issues of employment conflicts are the violation of emotional needs, the non-recognition of social demands (i.e. security, sense of belonging) and the disintegration in group life among workers. For that reason, the study also intends to consider the affective dimension from workers' point of view and get a fuller picture of the ET situation.

6.5.1 Literature on workers' feelings about the ET system - The affective dimension

The workers are usually reported as having to consider a number of issues and experience serious anxieties such as crying, shaking, making angry outbursts, demonstrating a low tolerance for stress and generally feeling greatly traumatised and weakened (Renton, 2012).Particularly, they have to decide whether to challenge their employer and wonder whether it is worth attempting an ET claim or whether any alleged wrongdoing will ever be investigated if they bring the claim, but they also worry how to deal with the legal representatives if they are involved in their case (Meager *et al*., 2002; Lewis, 2013; Renton, 2012). Otherwise, the workers feel much more frustrated, because they are not aware of the way disputes are resolved in the ETs, especially when they need to make crucial decisions and face all dilemmas on their own. Furthermore, they feel a lack of confidence as to whether they will be fairly treated, fearing that any action will affect their future employment prospects and worrying about potential costs (Meager *et al*., 2002; Lewis, 2013). Nevertheless, one of the worst feelings for a worker is that of the fear of facing institutional hostility because

"it often feels as if there exists a constant systemic assumption that employers are basically right and claimants are wrong" (Renton, 2009, online).

Apparently, it appears that claimants find the experience of bringing an ET claim difficult, unpleasant, insurmountably physically and emotionally taxing and ultimately, not a good solution, especially in discrimination cases or even in cases where the claim was successful (Aston *et al.*, 2006; Gibbons, 2007; Renton, 2012, p.2). Research shows that it is male, old and longer-tenured workers who tend to make tribunal claims (Broughton, 2011).

Furthermore, claimants may feel worried who to address, where to get help and how to achieve 'justice' (Meager *et al*., 2002). Undoubtedly, they normally feel the need to obtain professional assistance from someone with legal knowledge/expertise in the field (i.e. employment specialists, advisors, lawyers) for the better identification of the issues that have arisen and their briefing about the procedural rules (Meager *et al*., 2002).

According to Holgate *et al*. (2012), workers express anger and frustration with the aid advice system as a whole, prior to the tribunal hearing, because they have difficulty in getting anything more than advice. In particular, they find that these services (for example, the CABs or the Law Centres) are not always available when they need to ask for information and advice (for example, services operate only a few days per week). In relation to this, sometimes, due to staff-shortage or lack of expertise, a worker feels isolated and poorly served, sometimes ultimately feeling lost and defeated (Holgate *et al*., 2012). In relation to this, European and Asian workers (including a few ethnic minority communities) have reported that they dislike and distrust three-way telephone communications/consultations ('Language Line') which involve the presence of an interpreter, since there is "the fear of who might be on the other end of the telephone, because there is a lot of intimidation that goes on by certain gangmasters" (Tailby *et al*., 2011, p.284).

The situation is worse for those claimants, usually women and ethnic minorities, who are unrepresented (Hepple *et al*., 2000). Workers wonder what their legal rights are and how they might find the opportunity to make a claim against their employers (Meager *et al*., 2002). They normally have a low awareness of what process they should follow

prior to or during the tribunal hearing and struggle to understand what comes first or where to go (Gibbons, 2007). Research and practice show that workers feel considerably disadvantaged, as they struggle alone, when they confront the adversarial and legalistic proceedings of the ET system as well as their dominant (ex) employers, who are normally represented or most probably have frequent experiences of the ET system and are used to presenting company documentation (Cownie *et al*., 2007; Leggatt, 2001). Thus, it is implied that the educated, articulate and represented worker feels more advantaged than one who is unaware of his/her rights. Those claimants who finally reach a tribunal hearing, despite the fact this experience is new and difficult, feel greatly shielded by their representative, while the unrepresented feel severely disadvantaged, stressed and bitterly disappointed with their treatment (Denvir *et al*., 2007, p.119, 127).

At the tribunal hearing, an indicative survey of claimants in race discrimination ET cases has shown that they differ from other claimants (i.e. not related to race discrimination or discrimination cases, unfair dismissal cases) in that they are much more affected by stress and have greater physical health problems; their career and personal relationships are adversely affected and they are more likely to report a loss of hope, faith or trust in the system (Peters *et al*., 2006, p.41). Undoubtedly, in such complex cases, claimants lose their confidence and feel more disadvantaged by their (ex) employers, especially when they do not have a representative to help with the case and know that the latter probably will (Davey and Dix, 2011).

The situation is rather difficult for those claimants who have stopped working and see their ex-work friends in the ETs ready to give evidence in favour of the employer, having been pressured into doing so. On the other hand, there are some cases where claimants carry on working for their employer after lodging their claim. Those claimants who carried on working during the tribunal hearing described a working life "bordering on intimidation and fear for their personal safety" (Aston *et al*., 2006, p.45). For instance, it was reported by a claimant that "she was being threatened, and thought she was being followed and began to doubt about her own sanity" (Aston *et al*., 2006, p.45). Some others shared how surprised and shocked they were by the sudden change of their (ex) employers' behaviour towards them which involved verbal abuse, tacit threats, the implicit possibility of financial retribution (to recover their costs from

claimants if they lose the case), victimisation, humiliation in terms of performing menial tasks and further relationship problems with their work colleagues such as sabotage, bullying and embarrassment (Aston *et al*., 2006, p.46).

Therefore, it is understood that unreasonably prolonged processes negatively influence any worker's emotional state as he or she cannot escape from unpleasant situations. In more detail, while being involved in lengthy processes and unreasonable extensions of set time limits, a worker may face open hostility, verbal harassment, threatening messages, marriage breakdown, emotional strain, increased personal problems, exposure to negative acts and retaliatory acts (such as ostracism, demotion and denial of opportunity to apply for promotion) (Elliston *et al*., 1985; Bjørkelo *et al*., 2008). Everyone agrees that even the preparation and presentation of a claim at a tribunal hearing normally involves many months of stressful personal effort and the devotion of considerable time and energy (Dunstan and MacKellow, 2008).

It is also necessary to consider those cases where a worker thinks of withdrawing his/her case. Examples are drawn from workers' experiences of sexual orientation, religion and belief cases. A claimant may feel reluctant or bitter for being forced to withdraw the case because he or she cannot compete with the employer's representative, he/she is financially threatened or perceives the employment judge to be potentially biased (Denvir *et al*., 2007, pp.104-107). The worker will feel more abandoned and depressed when left without representation or legal aid.

Another key point to note is how a worker feels on those occasions where the ET system delivers 'empty justice' or 'hollow victories' because some 'rogue' employers, as characterised by the CABs (2008), take advantage of the fact that the ETs cannot enforce claimants' awards as these have to be later enforced in civil courts. Therefore, they deliberately choose not to pay. In practice, it is reported that many claimants never try to enforce unpaid awards even if the money would make a significant difference to their lives because some have the fear for further complex legal actions and feel distressed under cost pressure; if they do so, they shortly have to give up in frustration or, in other extreme cases, find themselves and their families vulnerable to the danger of homelessness caused by unbearable expenses and debts (Dunstan and MacKellow, 2008). It is worth pointing out that, based on research findings, most claimants show a

desire for justice rather than financial gain. Some of them even feel regret for not bringing the case to tribunal since what counts for them is to have a moral victory against the employer and achieve their 'emotional objectives' (Denvir *et al*., 2007, pp.138-139, p.150; Lewis and Legard, 1998). Thus, they expect to hear a sympathetic judgment, or to see their employers reprimanded when they have acted wrongly by getting them punished for their misdemeanors or getting their jobs back (Aston *et al*., 2006, p.37).

Lastly, it can also be said that some claimants might feel rather disappointed by the final outcome in cases where the ET system cannot deliver a remedy, namely, when the tribunal fails to reinstate or when a finding of discrimination or UD is obtained and the award is significantly less than worker's actual loss or when a compensation is ordered but the employer never actually pays (Renton, 2012).

The most important point to note is that claimants are already burdened with poor mental and physical health as well as having a strong sense of injustice after terminating their employment; any further problems (poor representation if any, inadequate remedies, hostile legal principles) in the ETs cause further stress and prevent them from fully recovering (Renton, 2012).

Hence, the overall picture is that an individual worker experiences a variety of unpleasant situations in the ETs and feels an emotional upheaval. This may take the form of stress, depression, fatigue, isolation, powerlessness, helplessness, loneliness, loss of self-esteem or an emotional drain from the pressure of the case (Tailby *et al*., 2011; Holgate *et al*., 2010, 2012).

On the other hand, reports prepared on behalf of BIS (2014) have explained that satisfaction was the highest in two cases when: the claimant was successful at tribunal, and an ACAS or a private settlement was achieved. Thus, it is reasonable that they found that a fair chance was given to them to make their case; whereas in any opposite case they said that the hearing was more favourable to the employer. There were times that claimants were also satisfied with 'the workings' of the ET system (BIS, 2014). Similarly, in 2013, claimants' expectations about the outcome of their case were similar to those seen in 2007, but slightly less positive than those in 2012 (45 per cent

thought they were very likely to be successful, compared with 48 per cent in 2007) (BIS, 2014).

Overall, this background on workers' feelings about the ET system helped me to understand at an early stage the difficulties that I would have to confront in the case of conducting direct interviews with them (details are provided in the next chapter).

6.6 Conclusions

Until now, I presented a thorough analysis of all available conflict resolution mechanisms (i.e. trade unions, works councils) and procedures (i.e. grievance process) (s.4.2; s.6.1) which imply the occurrence of the two essential conditions of collective voice and mobilisation (s.4.4.1). It is understood that if the individual worker has exhausted these options, he or she still has the chance to attempt alternatives to mobilisation such as mediation and conciliation (s.5.2).

Automatically, in case of another failure to resolve his or her disputes with management, he or she may address to the last justice system, the ET system (s.6.3) and succeed unless he or she cannot afford to pay the huge fees, cover any representation expenses, tolerate its bureaucratic, determinative and confrontational nature, the quasi-judicial tribunal and overcome the risk of seeing his or her claim being withdrawn, dismissed or struck out and so on. Thus, it seems that the worker has to confront not only a procedurally complicated justice system, but also non-desirable determinative ET outcomes (Table 6.4).

Based on the literature on the ETs and tribunal statistics (as discussed and analysed in this chapter), it is confirmed that the constant legislative changes in the ET system (s.6.4-6.4.5) reinforce the employers' position in such environments; the formalisation of the ET process (Figure 6.16) since the 1970s continues to endanger workers' interests and bring employment relationships to an end, as the ideal conditions for workers (Figure 4.9), including the presence of a strong and effective union voice, collective mobilisation and intention for cooperation, are absent.

Particularly, claimants are bombarded by a number of issues that need to be resolved before pursuing a claim. The existing literature (s.6.4.2) shows that the imposition of issue and hearing fees is the biggest and most difficult burden to overcome in the ET

process. People have to focus on how to pay such costs and other extra expenses rather than finding ways to succeed with their claim. At the same time, they hope for some help or representation either from agencies that offer free services or from their unions and lawyers in case they cannot afford it. Considering the fact that their living standards are falling, the sharp squeeze (Figure 6.15) and their employment status, claimants also have to consider seriously whether it is worth pursuing a claim (i.e. estimate the overall possible compensation at a time when awards have dropped significantly, face possible cost orders for bringing vexatious claims, consider the possibility that they will not be paid by their employers and so on).

Thus, it is demonstrated that the ET system is not the ideal solution for claimants, since it does not lead to desirable results, weakens their power and does not protect their rights and interests as CB would do in other cases (as discussed in s.6.5). Moreover, based on the findings of previous relative studies (s.6.5.1), it is confirmed that claimants' position in the ETs has changed dramatically in the last 40 years. It is evident how bad their emotional state is when they are involved in such extra-workplace systems and a significant factor that was seriously taken into account during the research design process of this study (see Chapter 7). Particularly, in the next chapter, it is explained why interviews and no other research tools were used, and why experts were interviewed instead of workers.

Chapter 7: RESEARCH DESIGN

In the previous chapter, the literature on the transition from the workplace voice mechanisms to the ETs was discussed in detail. Hence, the typical stages to settle an employment dispute were initially covered, either when mobilisation is present or not. This was followed by a thorough analysis and comparison of the features of the ET system in the 1970s and now in 2015. Apparently, it is concluded from the existing literature on the ETs, all available tribunal statistics and the literature on workers' tribunal experience that the ET system is not an ideal extra-workplace system for workers.

In this chapter, the methodological approach (phenomenography) and the research method (expert interviews) of this study are discussed in detail. Justifications are also provided as to why interviews were chosen instead of other research tools and why employment experts were questioned as a preference to workers, based on the literature on earlier similar studies.

7.1 Methodological approach

In this study, a broadly phenomenographic methodology was used. It is a fairly new empirical research tradition that was developed as a tool for educational research from the Department of Education and Educational Research at Goterburg University in Sweden in the 1970s (Barnard *et al*., 1999).

The purpose here was to find out 'the qualitatively different ways' in which a group of people experience, conceptualise, realise and understand various aspects of complex social phenomena in the world around them, rather than focusing on the phenomena per se (Bowden *et al*., 1992; Marton and Booth, 2013). Hence, this method assisted in understanding employment experts' way of experiencing the world (Chapter 8).

Phenomenography differs from other methodological approaches in that the former is:

- 'non-dualist' in that reality is seen as constituted from the internal relationship between the individual subjects and an aspect of the world (Trigwell, 2000);
- 'qualitative' as it tries to explore and describe a phenomenon from the data rather than fitting the data into predetermined categories;

- ‘a second order approach’ because it is about the experiences of others and not of the researcher (Trigwell, 2000);
- ‘focused on variation’ in the ways an aspect of the world has been experienced; and
- able to produce results in a set of categories that are ‘internally related’ (Mann *et al.*, 2007) (see Figure 7.17 below).

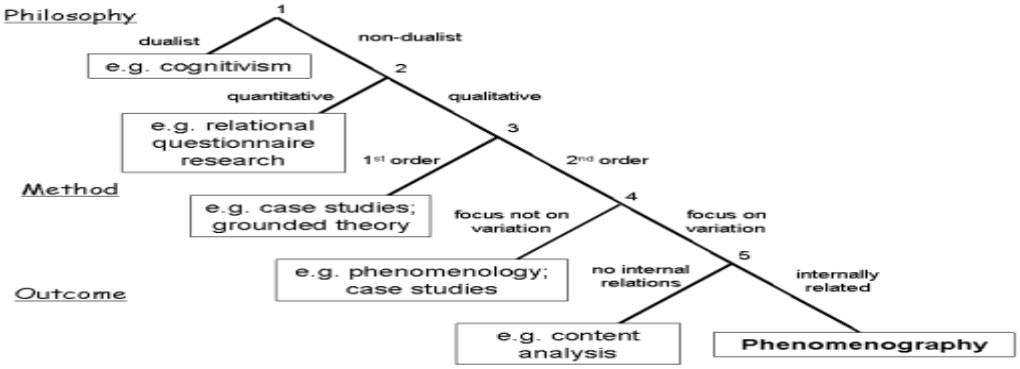

Figure 7.17: Phenomenology and other approaches (Mann *et al*., 2007, p.7)

More specifically, this approach is also appropriate for the present study, compared to others, because it “provides a way of looking at collective human experience of phenomena holistically despite the fact that such phenomena may be perceived differently by different people and under different circumstances” (Åkerlind, 2005, p.72). Hence, this scientific research approach is the best way to describe variation in the way of understanding claimants’ behaviour in the ETs from the interviewees’ perspective, to reflect over their experience of the phenomena. As argued by Mann *et al*. (2007, p.6), the researcher can be opened to “other ways of experiencing the particular aspect of the world under study, and able to present these other experiences as genuinely as possible”. Additionally, the descriptions of interviewees’ lived experiences (everyday interaction) of the phenomena can be used to avoid the risk of the researcher’s subjective bias.

Data analysis was done phenomenographically by relying on Budd and Colvin’s framework (s.5.3).Ontological and epistemological pre-considerations were also taken into account. These are commonly referred to as a person's ‘Weltanschauung’ (2015) (or worldview), and is defined as “a comprehensive conception or appreciation of the world especially from a specific standpoint”, including themes, values, emotions or ethics. In other words, they helped in defining the meanings of a particular situation upon which the research methods were decided (Naugle, 2002; Palmer, 1996).

Therefore, in this study, the careful and unprejudiced descriptions of the interviewees could provide meaningful insights about claimants' experiences and conceptions about the ETs. From a non-dualistic ontological perspective, there is only one real, existing world, which is experienced and understood in different ways by human beings (Bowden, 2005; Marton and Booth, 1997). The world is both objective and subjective because as Säljö (1997, p.173) has defined, "the internal (thinking) and the external (the world out there) are not posited as isolated entities". Hence, it is implied that the interviewees would not describe a world that is independent of their experience with the phenomena.

Finally, the ethical issues, namely, the rights, wishes and needs of informants, could not be ignored (Rogelberg, 2008). In particular, it was ensured that all interviewees participated voluntarily in the research and they were not deceived about its nature since they were fully informed about the use of the data, for example, not to disclose unauthorised information and falsify the research findings (Chapter 8) (Saunders *et al*., 2009; Rubin and Babbie, 2010).

Discussions about the preparation of the interviews with the employment experts and the whole process follow below.

7.2 Data collection method and process

The main data collection instruments of this study are the expert interviews (or the otherwise called 'talking questionnaires') (Kahn and Canell, 1957). Particularly, the interviews assisted in achieving a positive rapport with the interviewees, modifying the lines of enquiry, investigating complex issues and clarifying them, gaining rich narrative information since the interviewees are able to speak for themselves and reveal what lies behind an action (high validity) (Marshall and Rossman, 1995; Creswell, 2003; Bryman and Bell, 2007). In total, I conducted 18 non-standardised, face-to-face, semi-structured, individual (one respondent is interviewed at a time) expert interviews. This resulted in approximately thirteen hours of interview time, ranging in length from 40 to 80 minutes. These were held at the interviewees' workplace in mid-June 2013, mid-October 2013 and at the end of January/beginning of February 2014.

The interview schedule was designed based on Budd and Colvin's metrics (as analysed in s.5.3) and in conjunction with the literature. It is comprised of a set of 16 carefully formulated, open-ended questions (Qs) (what, why, how) that helped me to address how workers experience the ETs (Appendix 2). The first 3 general questions were aimed at covering the differences in the operation of ETs in the past, present and future considering the recent legislative changes. With the 10 specific questions under the heading of 'process' and 'representation', it was intended to get information about the significance of equity-efficiency and voice factors in the ETs, respectively. Finally, the schedule concluded with the 3 last questions which covered extra themes such as recommendations for the improvement of the current system and discussion about the expectations of workers from the ETs. The questions were adequate because I managed to draw interviewees' observations about all workers' experiences that address to the ET process, detailed information about the necessity of representation in the ETs and the efficiency of the ET system through discussions about the topical issue of the new legislative ET changes and their effects. The interviewees found Q14 (other factors that affect workers' ability to manage the process) and Q16 (recommendations for the improvement of the current ET system) the most challenging questions (Appendix 2).

The employment experts (Appendix 3) were selected on the basis of the relevance of their work experience and knowledge to the ETs. Each one of them possesses multiple positions, has tribunal experience and vast experience in employment. More specifically, most of the interviewees are involved in academia and other related activities, for example, public lectures, authorship, writing, blogging; then it follows that several of them are qualified employment practitioners who deal with the cases of both employers and employees, i.e. barristers, solicitors and consultants. TU lawyers and those who are involved in professional associations and policy committees follow. Lastly, employment judges, mediators and government officials participated in the interviews as they are extensively involved with the ETs.

Moreover, the experts have knowledge of details on operations and laws; direct involvement on interactions and process; and make subjective interpretations of rules, ideologies and relevance (Bogner and Menz, 2002, p.46; Van Audenhove, 2007). Hence, the employment experts were trusted in this study because based on the above descriptions, they have 'technical', 'process' and 'interpretive' knowledge, respectively, referring to their specific professional sphere of activity.

Two extra reasons for such a decision were: their direct involvement with the ET process and their access to all categories of claimants (i.e. vulnerable workers, ethnic minorities, manual workers, white-collar workers and so on) as well as their credibility. Hence, the collection of negative responses from claimants to participate in the study or even responses that are subject to selective recall due to their negative emotions during the process were avoided (see above s.6.5.1). The experts were the only respondents that could provide an overall picture of how workers experience the ETs and report on the effectiveness of the ET system in terms of voice, equity and efficiency.

In detail, the testimonies of the employment experts carry a high degree of credibility and a large number of cases could be crystallised in their opinions. Their unique insight assisted in gaining an overview and clarifying or reflecting important and complex issues that concern all workers regarding the operation of the ETs. In the absence of any social desirability bias, the interviewees were only interested in reporting their real-life experiences, their beliefs and opinions about the deficiencies of the ET system and their effect on workers. Because their testimonies are kept anonymous, the experts did not feel that they had to report an answer in a way they deemed to be socially acceptable. In fact, until they were assured about the use of a recorder, their body language revealed their hesitation to proceed with the interview. All interviews were recorded and professionally transcribed verbatim. Detailed notes were also written up as fully as possible. The interviewees were also asked whether they could check the transcripts. Some of the interviewees had some opportunity to check what they said. Some others refused as they trusted the use of the voice recorder.

Furthermore, the sample was selected because there is a university connection with them. Hence, the purposive sampling was the best technique available for collecting data in this research through expert interviews. It was mainly used because the aim was to identify and select information-rich cases which have particular characteristics that could assist in the research. Namely, they would have specialist knowledge about the phenomena of interest and be likely to contribute high value information, in terms of relevance and depth of understanding by covering a full range of perspectives (Patton, 2002; Cresswell and Plano Clark, 2011). Additionally, this technique eases the process of identifying ‘hidden populations’ that are very difficult to access, and helps in reaching the targeted sample quickly. In relation to this, there is the importance of

availability and willingness to participate as well as the capacity to communicate experiences and opinions in an articulate and reflective manner matters (Bernard, 2002; Spradley, 1979).

The sample being investigated in such cases is expected to be quite small, often fewer than 30 cases (Tashakkori and Teddlie, 2008). In this research, 15 individuals were initially identified as relevant to the study from whom I received 9 positive responses. From this sampling, people who knew people that generally have similar characteristics were recommended as good interview subjects and the sample was built as the study continued (snowball sampling). With great difficulty, I managed to get a few more people; some of the above respondents recommended 8 others, out of whom only 5 accepted being interviewed. I am of the opinion that these were normal reactions since from the start of the process, I relied on people who hold senior positions, experts in their field. Also, I had the chance to conduct an interview with an additional expert that I met during my observations (see s.7.2.1 below). At the end, I conducted complementary research based on information available online, from which I identified 3 additional important people who also participated in the study. The process stopped because no new information was obtained.

Before conducting the interviews, I went through the questions with my supervisors and then I forwarded the list of questions to my fellow Law PhD students to test their validity and clarity. Useful feedback was derived:

- after considering the limited time available, the number of questions was reduced from twenty-one to sixteen
- the use of questions that were ‘directing the witnesses’ was eliminated
- the topics of my research were made more specific by avoiding vague, long and double questions and finally
- my interest to explore things from the workers’ perspective became clearer.

Closer to the day of the interview, due to interviewees’ limited time, I sent the checklist questions for their consideration. This was the best choice as it gave them the chance to check the questions briefly and reassure me before the interview that they were capable

of answering my questions as well as organising their thoughts (and time) during the interview according to the themes, without repeating themselves.

During the study, careful thought was given to reliability[50] and validity[51] for the assurance of credible research findings and satisfactory conclusions (Hammersley, 1987; Robson, 1993; De Vaus, 2002; Ritchie and Lewis, 2003). In qualitative research, validity may be addressed through the honesty, depth, richness and the scope of data achieved, the participants approached, the disinterestedness or objectivity of the researcher (Winter, 2000; Cohen *et al*, 2007). Thus, I familiarised the respondents with aspects of the research and its objectives, stressed the significance of the findings, highlighted the importance of their participation in the study, and ensured their anonymity so that they could freely express their views and be encouraged to address politically delicate issues (Saunders *et al*., 2009). Hence, for the purpose of anonymity, each interviewee (Int) in the analysis of the expert interviews below (s.8.2) is referred to by a letter of the alphabet from A to R. I also obtained their permission to record. Despite the fact that sometimes the interviews were disrupted due to telephone call interruptions or the meetings were delayed or re-scheduled because the professionals were very busy, all interviewees were always keen to help me in my research and willing to answer the questions.

7.2.1 Justifications for selecting the interview method and employment experts instead of workers (to be interviewed)

Initially, the plans were to start with structured and non-participant observations of at least ten tribunal cases to see how often things happen (rather than why they happen); these would be followed by interviews with the observed claimants.

Based on the information provided by the Ministry of Justice, there are around thirty-five hearing centres available in England and Wales (HM Courts and Tribunals Service, 2015). However, due to time restrictions and the need to attend hearing/s from 9.00hrs to 17.00hrs, the ET venue was selected considering the ‘distance’ factor. Hence, from the three venues that are based in London, the London South Employment Tribunal (West Croydon), the London East Employment Tribunal (East

[50] Getting the same result on repeated occasions
[51] Whether the findings are really about what they appear to be about

London) and the London Central Employment Tribunal (London), the latter tribunal was the most convenient location-based tribunal to visit.

Generally, the observation process involves the systematic observation, recording, description, analysis and interpretation of objects' behaviour. One of the first objectives was to agree with my supervisors on a draft observation schedule to ensure that each participant's behaviour is systematically recorded. The purpose was to concentrate on specific aspects of behaviour and the environment to collect data, make observations more accurate and verify information (Bell, 2005; Bhattacharyya, 2009; Denscombe, 2010; Lowe, 2013). From the first moment, I realised how difficult it was to follow and fill out the observation schedule that I attempted to draft in relation to claimants' behaviour in the ETs.

What is more, it was necessary to decide before any interviewing of claimants which tribunal cases to attend so that the whole range of tribunal claims would be covered. My intention was to avoid presenting findings that will partly describe the experiences and feelings of some categories of claimants who participate in the ETs. In relation to this, I was also ensured by the tribunal officers that this was not possible as the timetable of the tribunal proceedings of the day is always likely to change. Because in the majority of the cases the duration for each case lasted more than a day, extra time had to be spent to complete filling out the observation schedule and then approach each individual at the end of the hearing.

In relation to this, as part of the observation, I noticed that claimants were unlikely to accept being questioned considering their poor emotional state (before and after the hearing) (as presented in s.6.5.1 above) and come forward in big numbers for the sample. Individuals may sometimes seem calm during the process, but their facial expressions and body language revealed otherwise, i.e. they blushed, removed their glasses or wore them in a nervous manner and drank a great deal of water during the hearing. At the end of the hearings, I attempted to approach some of these claimants to ask them to participate in my research. However, it was difficult to contact them since they tended to stay close to their relatives who normally come to support them and their lawyers who offer to answer any questions that have to do with their clients.

At the same time, I examined how other researchers collected their data in similar projects and reached conclusions in terms of the methods that they have used. The main reason for this was to see how feasible it is to conduct observations and interviews with claimants to address the research question. So far, some British universities, such as Bristol (2014) in collaboration with Strathclyde, London Metropolitan (Holgate *et al*., 2010, 2012) as well as ACAS (Denvir *et al*., 2007, Hudson, 2007) initiated projects in which they intended to report the emotional state of specific groups of claimants in the ETs. In other words, these have limited scope as they do not cover the reactions and behaviour of all categories of claimants. Their research was restricted to ethnic minorities, vulnerable workers and racially discriminated groups because they were interested in the examination of only those categories of claimants. On the other hand, there is an attempt on behalf of the Government (i.e. ex-Department of Trade and Industry [DTI], BIS) to report on all categories of claimants regarding their expectations and satisfaction with the ET system as well as the fairness of the ET hearing, in a few paragraphs, in a section entitled 'Impact and satisfaction' (BIS, 2014, Aston *et al*., 2006).

More specifically, in Holgate's *et al*. (2010, p.9) project on minority ethnic group workers, it was hard to contact the claimants, despite research team's experience and multi-linguistic abilities. Two major problems were identified: firstly, the difficulty to reach ethnic minority group workers and secondly, the existing language barriers. Initially, a multi-method approach was used to collect data from various sources. At first, they had to conduct quantitative analysis from the existing datasets, namely from Census, Labour Force Survey, WERS. The purpose was to understand the positions of the communities (i.e. in terms of employment sectors, ethnicity, gender, and age). Then, they had to conduct interviews with officials from TU agencies and community groups so as to have a wider perspective on work-related or other issues in specific boroughs and communities (Hackney, Lambeth, and Ealing). Afterwards, interviews and focus groups (4-12 workers in each group) with claimants followed in places convenient to them (for example, homes, cafes, workplaces, local community centres); these were delivered in English, Kurdish, Urdu, Gujarati, Malayalam, Tamil and Hindi by highly experienced researchers with strong connections, community and TU experience. To approach workers for the interviews, they sent out emails through TUs, put up posters in local libraries and community centres, gave out leaflets printed

in different languages outside cafes, shops, factories, and used social networking sites and a BBC radio London phone-in show to circulate information. A small fee was also offered as a reward for their time. More focused methods were used to approach those workers who seemed more under-represented in this sample, that is, the young and public sector workers. Thus, in the first case, researchers from the black community collaborated with the team to conduct the interviews through the method of snowballing (word of mouth contacts). In the last two cases, workers were approached through colleges and UNISON, respectively.

Similar problems were noticed in Hudson's *et al*. (2007, p.21) project on the experiences of unrepresented workers (and employers) involved in race discrimination claims to the ET service (i.e. those seeking conciliation) which was undertaken on behalf of ACAS Research and Evaluation section. From a database of claimants and employers involved in conciliation kept by ACAS, only those with completed claims were contacted to participate. The recruitment of the sample was firstly concentrated in locations where minority groups and race discrimination cases were clustered. They were interviewed in cafes, pubs and public libraries and an incentive payment was given for their participation. Problems occurred in recruiting claimants from all ethnic minority groups, particularly female Bangladeshi and Pakistani (excluding white claimants) because they were unwilling to participate in telephone interviews. The telephone screening process revealed that whenever claimants were informed that ACAS was behind the project, they showed an unwillingness to participate. Some of the reasons were because they were upset about their experiences of pursuing a race discrimination claim and did not want to relive them or they were angry about their experiences of ACAS conciliation. Furthermore, they could not take time off work or they did not want to be interviewed in a workplace setting. Finally, they showed distrust of the research and wanted to be assured of confidentiality and that the team was independent of ACAS. To resolve this issue, ACAS tried to identify female Pakistani and Bangladeshi claimants in the database by using surnames as an indicator. Additionally, a few letters were sent to those who could not be contacted using the telephone details in the database and a series of telephone calls followed. However, only one accepted being interviewed.

In the Aston *et al*. (2006, p.3) project, the non-governmental research team, the Institute for Employment Studies (IES), in collaboration with an independent research organisation which conducted interviews with claimants who preferred to be interviewed in languages other than English studied the experiences of claimants involved in race discrimination claims. In reality, their research complemented the survey of ET applications (SETA 2003) and the survey of claimants in race discrimination ET cases (SETA RRA 2006) which were conducted by the DTI. The DTI commissioned the IES to carry out the project and the latter sent around 300 invitation letters, after reviewing on race discrimination and ETs. Only 40 claimants accepted to participate in face-to-face interviews at their homes or in cafes. It was reported that this number of claimants could be not be taken as 'a representative or comprehensive picture' of the experiences of claimants as a whole or of individuals who take this course of action.

In the Harding *et al*. (2014, p.18) project, the sample frame was supplied by Her Majesty's Court and Tribunal Service (HMCTS) and the data were collected using Computer Assisted Telephone Interviewing (CATI). In total, 1,988 interviews were carried out with claimants and 2,011 with employers. However, in the section 'limitations of methodology', the researchers, who acted on behalf of the BIS, reported that claimants' responses were subject to 'selective recall or social desirability effects or exacerbation'. The reason was that they had to recall past events; they could find their involvement in the ETs highly emotive and traumatic, especially the represented claimants, due to their limited direct involvement.

Therefore, none of these studies is complete in the sense that provides enough information about all workers' feelings and experiences in the ETs so as to have a general picture of the situation. Unfortunately, it appears that it is difficult for a sole researcher to overcome the aforementioned problems, that is: the language barriers, the inability to access large databases with claimants' details, the huge preparation in combination with the expenses that are involved, the difficulty to approach ethnic minority workers who seem more reluctant to participate, the inability to offer incentive payments that will encourage claimants' participation in the study, and the non-avoidance of responses subject to selective recall or social desirability effects.

On the other hand, it is noticed that in almost all cases, qualitative direct (face-to-face) interviewing was chosen for the collection of detailed and rich information about complex employment issues such as that of investigating the tribunal experience of claimants. This is also one of the main reasons to consider employing interviews as the most appropriate method for this study.

Hence, considering the above failed attempts and the number of problems that arose in earlier studies, I abandoned the idea of observing the claimants as well as interviewing them, to avoid such difficulties. Instead, I decided to conduct interviews with employment experts because they are particularly competent as authorities on certain matters of fact, but most importantly, they have specialist knowledge and intimate experience of the ET system (Deeke, 1995, pp.7-8).

Overall, conducting interviews is not an easy task, even for the most experienced researchers, research organisations, and universities, ACAS or the Government, who normally work in teams. In relation to the above projects, a number of problems had arisen regarding the way of approaching, contacting and convincing workers to participate, the type of interview to be used, the place of interview, the language to be used, considering their past experiences and emotional state when experiencing such extra-workplace justice system. It appears that it is better if there is collaboration with the BIS or ACAS since researchers can take advantage of their large databases (such as claimants' and respondents' contact details) and avoid other time-consuming preparations before interviewing them (for example, sending emails, using social networks, preparing posters). Nevertheless, it is not possible to cover all types of workers; indeed, it is noticed that the majority of these projects are restricted to particular groups of claimants such as minority ethnic groups or those related to race discrimination claims. Hence, for all these reasons, I decided to conduct interviews with employment experts.

7.3 Conclusions

In the context of planning and designing this study, the examination of earlier similar studies helped me in choosing the appropriate research tools and methods, and overcoming various problems that I might confront had I chosen to conduct interviews with claimants. Based on the analyses in this chapter, the inability to access large

databases with claimants' details, any language barriers, the inability to approach vulnerable workers, any necessary expenses, and the non-avoidance of receiving claimants' responses subject to selective recall are some of the basic problems which, in conjunction with their poor emotional state in the tribunals, led to my decision to abandon the idea of interviewing them.

Expert interviewing was adopted because it is an effective way to collect rich information from people with specialist knowledge, experience, credibility and direct involvement with claimants and the ET process. Therefore, the interview method was the most suitable method for this study since complex employment issues could be fully explored and detailed information were collected, especially through the interviewees' eyes.

Hence, for all these reasons, 18 experts (i.e. academics, judges, mediators, government officials, national and TU officers, and employment practitioners) were interviewed as it was the best way to record their conceptualisations, insights and experiences with the phenomena of interest (phenomenography). An interview schedule was carefully drafted based on the existing literature (Chapters 2, 3, 4, 5, 6) and Budd and Colvin's three metrics since these are considered as valid, broad and the most complete metrics, which helped in comparing and evaluating the effectiveness of the ET system (s.5.3).

The analysis of the research findings of this study follows in the next chapter.

Chapter 8: DISCUSSION OF THE RESEARCH FINDINGS

This chapter brings together the findings from the 18 expert interviews and concludes with the evaluation of the ET system, based on Budd and Colvin's framework.

8.1 Findings from the literature review in accordance to Budd and Colvin metrics

The study seeks to explain how workers experience the ET system through the application of Budd and Colvin's (2008) framework to the empirical examination of workers' tribunal experience from the experts' perspective. Based on the chosen conceptual framework I evaluate the existing justice system by using three metrics (i.e. efficiency, equity and voice).[52]

In terms of efficiency, when a worker is engaged with legal proceedings such as that of the ETs, he or she is obliged to act under pressure, in a hostile, unknown and full of formalities environment (Roberts and Palmers, 2005; Edge, 2004; Carmichael, 2002; Moffitt *et al*., 2005; Mahony and Klaas, 2008; Law Reform Commission, 2010). Thus, any problems which are associated with such processes as complicated law, the lack of legal knowledge, complex proceedings, delays, costs, and issues with accessibility show how inefficient the ET system can be.

The economic and social power imbalances (Greiner and Schein, 1988; Edwards, 2003; Renton, 2009; Lewis, 2013), the low social status, lack of skills and education (Palmer, 1983; McDermott and Berkley, 1996; Jameson, 1999), the tendency for low career aspiration, exclusion from high status and privileged positions, and income instability (Garcia *et al*., 2003; Pillinger, 2010; Wajcman, 2000; Honeyman and Goodman, 1991; ILO, 2009; Albin and Mantouvalou, 2012; Tadesse and Daniel, 2010; Pillinger, 2010; Holgate *et al*., 2010) as well as issues in respect of class culture, language, religion, diversity, nationality (Tadesse and Daniel, 2010; Pillinger, 2010; Holgate *et al*., 2010; Chen and Wong, 1998; ILO, 2003; Serrano *et al*., 2011) may be equally responsible for an inequitable ET system.

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[52] Efficiency: financial costs, speed, promotion of productive employment, emotional/psychological costs
Equity: unbiased decision-making, effective remedies, consistency, reliance on evidence, opportunities for appeal, protections against reprisal, similar treatment of parties, procedural and distributive justice, equally accessible irrespective of gender, race, national origin or other personal characteristics
Voice: hearings, obtaining and presenting evidence, representation by advocates and use of experts, input into design and operation of a DR system, participation in determining the outcome

With regard to the voice factor it is clear how important workers consider representation in workplace environments (Bulger and Mellor, 1997; Clark, 2009; Likert, 1961; Lawler, 1986; Kelly, 1998; Fuller and Hester, 2007; Croucher and Cotton, 2009; Paquet and Bergeron, 1996). Nevertheless, their need to be represented in court-style systems such as the ET system reinforces their fears of being victimised, ignored or exposed (Harcourt *et al*., 2004; Boroff and Lewin, 1997; Buscha *et al*., 2012; Taylor and Proud, 2002; Woodhams and Corby, 2003; Ministry of Justice, 2013b).

The findings from the current study add to the understanding of the problem of employee voice and representation by bringing the experts' perspectives to the discussion.

8.2 The analysis of expert interviews

8.2.1 Efficiency

The interviewees revealed the following issues in relation to 'efficiency':

a) The nature of the ET system compared to the 1970s
b) Difficulties experienced by workers during the ET process
c) The effect of the recent legislative ET changes
d) Negative feelings-behaviour-expectations of workers in the ETs

The interviewees provided a full picture of the functioning of the ET system by sharing their tribunal experience. Many times during the interviews, I noticed frequent use of the following descriptions regarding the management of the ET process by workers. In particular, almost all said how 'terribly', 'incredibly', 'fantastically' difficult and 'increasingly' intimidating[53] the ET process has become for workers (IntE,Q6; IntK,Q4; IntJ,Q8; IntG,Q4; IntI,Q4, 6; IntO,Q4; IntQ,Qs4, 6). These conclusions resulted from comparisons between the ET system in the 1970s and the recent years. By referring back to the original concept of the ETs (s.6.2), they confirmed that according to the Donovan Report, tribunals were set up to be speedy, cheap, accessible to people and to come to a decision on reasonableness (IntB,Q1;IntA,Q4). Characteristically, IntE (Q1) posited that:

[53] Especially, whey they have to relive certain events or words repeated in the newspapers (IntP,Q7).

> *it was supposed to be a quick and dirty, rough and ready, often instantaneous solution to a still current employment dispute, the express aim of which was to end up getting the employee back to work if at all possible.*

IntJ (Q16) wished they could 'turn the clock back' to 1971.

However, as it was supported, the formalisation of the ET process (s.6.5) has now become more 'extreme' (IntN,Q4). In relation to this, again, the majority of the interviewees described the ET system as much more legalistic, interrogating, daunting, overwhelming, difficult, lengthy, with more reliance on precedent, technical, adversarial, inquisitorial, complex and formal since the 1970s (IntA,Qs1, 3, 6, 16; IntB,Q1, 5; IntC,Qs1, 16; IntD,Q1; IntE,Qs2, 4, 5; IntF,Q1, IntH,Qs1, 13,15; IntJ,Q1, 4; IntK,Q1; IntG, Qs1, 2; IntL,Qs1, 4, 15; IntQ,Qs1, 7; IntR,Q1; IntB,Q1; IntO,Q4; IntP, Q4;IntG, Q13;IntM,Q13).

In fact, some of them were puzzled at how ridiculously popular the choice of the ET system is for workers when it is no longer informal, quick and cheap or at how the latter mistakenly believe that the ETs produce 'a level playing field' (IntE,Q1). For similar reasons, some others expressed their fears by saying that the intended outcome of the Donovan Report has now been lost (IntM,Q1) and in future, the ET process will become more alien, hostile and unsympathetic to workers (IntN,Q3).

IntA (Q16) was clear that it is time to admit that the ETs are, in fact, courts and to stop pretending that they are alternative dispute resolutions, quick, cheap and easy. It was further explained that the changing nature of the ETs towards a more court-style system (s.6.5) is due to the increased pressures in the way that rules and procedures are being changed, whilst "all policy makers will argue that the ETs are distinct and their distinctive nature needs to be protected" (IntR,Q1).

As stated, the current ET process could sometimes be very 'foreign' (IntL,Q15), 'wearing and mysterious' and 'equally baffling for everyone who is not a lawyer' (IntJ,Qs5,4). For all these reasons, the tribunal could feel 'an unforgiving place' (IntP,Q4) as well as 'an arcane and foreign world for a lot of people' (IntQ,Q8) rather than 'a safety valve' (IntA,Q2).

In greater detail, they reported that normally, the workers are ignorant of how the tribunal process operates and what the tribunal is going to do (IntQ,Qs4,6; IntC,Q4;IntP,Q4; IntJ,Q4;IntE, Q4; IntK,Q4). Many of the workers' preconceptions are based on what they have seen on television (IntP, Q4; IntJ,Q4). For instance, they fail to identify relevant issues and focus on them, i.e. to 'separate the wheat from the chaff' (IntH,Q4), but also disclose every relevant-to-the-case document without cheating (IntF,Q15, IntG,Q4). Moreover, they have difficulty in filling in complex forms online (IntF,Q5) as they are not assisted by those clerks who used 'to scurry about and be helpful' back in the 1970s (IntF,Q2), preparing witness statements that now are taken as read out,[54] going through an interlocutory hearing[55] in which they are confronted with difficult, open-ended legal questions (IntF,Q5;IntE,Q4;IntA,Q4; IntJ,Qs3,13; IntI,Q10), understanding what the actual legal test is (IntK,Q4) or reading the letters which are sent from the solicitors of the employer (IntK,Q4).

Interestingly, the interviewees admitted that even for the professionals with all 'intellectual, educational and cultural capital', it is difficult to understand how to present a relatively simple case to the ET (IntQ,Qs4, 6). Unfortunately, workers attract characterisations such as 'strangers' when they have never been in an ET (IntB,Qs7, 11), which shows their ignorance of the functioning of the ET system and their continuous effort to learn to do complicated things under the worst possible circumstances (IntQ,Q4). More specifically, those involved in discrimination, harassment and UD cases as well as in whistleblowing, transfer of undertakings and equal pay cases appear to experience the greatest difficulties during the process (IntK,Q7;IntC,Q7; IntJ,Q7;IntG,Q7;IntI,Qs7, 6;IntL,Q7; IntO,Q7; IntQ,Q7; IntR,Q7). In fact, IntR (Q16) proposed that it is better to have a specialist tribunal to deal only with discrimination cases.

Quite a few interviewees explained that workers' face such difficulties in the ETs because they cannot understand the legal language, the complicated and evolving law,

[54] For some interviewees, this was 'a detriment and a backwards step' because workers want to have their day in court (IntO,Q2) or they do not get the same acclimatisation into the way the tribunal works (IntF,Q3).For others, the process is not that slow or cumbersome, as there is no need to submit and read out 60-70 pages or spend 2-3 'reading days' (IntG,Q2) or be under pressure to recollect and answer questions by risking getting things wrong (IntG,Q2). Besides, as IntE (Q1) said, workers may make 'subject access requests' and collect as much information they can to advance their claims (s.4 Data Protection Act 1998, 2003).

[55] A hearing between the start of the case and the actual hearing of the case.

the interconnection of EU law and the framework within which they should be brought (IntO,Q4; IntJ,Q7; IntD,Q4; IntA,Q4). IntF (Q16), IntH (Q16) and IntE (Q16) encouraged the idea of simplifying and consolidating the variety of laws, rules and acts (not of policy changes), by accompanying proper explanations in simple and straightforward language. Therefore, it is evident how formalised the ET system has become and how it has skewed in favour of the employers (IntA,Q6). Nevertheless, some others were of the opinion that the new rules that have been subject to a 'piece-meal' revision over the years are better, clearer than the previous statutory provisions, in plain English and helpful (IntA,Q2; IntM,Q2; IntQ,Q2). According to IntE (Q2), the reason rules become complicated is because:

> *lawyers think up clever points to argue about the apparently simply rules and fate throws up difficult sets of factual circumstances which fall outside the range of cases that the drafters had anticipated*.

As indicated by IntP (Q2), the Government's intention has been to encourage individuals to resolve their problems within the workplace by maintaining the workplace relationship as it is a stressful experience to leave their job, and a costly and time-consuming for businesses. Because tribunals are not 'happy' places for anyone concerned, the hope is that with the changes that have come in, together with avenues such as early conciliation or other ADR services offered by ACAS (s.5.2), the Government will be able to use other methods to solve such problems before people have to go to the tribunal and achieve settlements (IntP,Q2). IntF (Q16), IntK (Q16), IntL (Q16), IntJ (Q16) were of the same opinion. Nevertheless, it was said that multiple claims should be excluded from early conciliation because this will reduce the administrative burdens and complexities on unions and ACAS (IntR, Q16).In any case, if they reach a tribunal, Government's goal is to make sure that stress, cost and time are minimised (IntP,Q2) and that it will provide a quick, instantaneous, non-formal way of resolving an employment dispute (IntE,Q1).

Nevertheless, some unions were concerned about the way that the Government is proposing to introduce legislation because that may give rise to extensive satellite litigation similar to that experienced in 2004 with the statutory dispute resolution procedures, "with employers seeking to challenge the admissibility of claims for an ET, because an individual may have not followed the correct procedure precisely in the early conciliation stage" (IntR,Q3).

Hence, it has become clear from the interviewees' descriptions of the current ET system (s.6.3) that it is no longer quick and efficient if a worker has to deal with a number of complicated, procedural and technical problems.

In addition to the above, the introduction of the issue and hearing fees (s.6.4.2) was considered one of the most catastrophic reforms of the ET system that seem to affect its efficiency and disadvantage workers, according to the interviewees. Some judges, experienced TU consultants, barristers, senior officers talked about their disastrous effect on claimants. Nevertheless, a judge said that it is a good measure when cases without merit are noticed; it was also heard by experienced counsels and the governmental officer that fees are subject to review or will be cut when a new Labour Government comes into power. More specifically, this reform was described as "a seismic paradigm shifting event, a very grave barrier" (IntQ,Q16), a purely political move as there is no relation to the industry (IntC,Qs2,3) which is 'overshadowing' the ET system and has 'unattractive, unwelcome, adverse, seriously chilling, disastrous effects' on workers (IntE,Qs2,3;IntK,Q3;IntR,Q2;IntC,Q2,3). Thus, any other legislative change seems to be "fiddling around the edges…" as IntQ (Qs2,16) said. This burden of fees, which is a disincentive for those who want to bring a case, was also characterised as a 'stupid' and 'immoral' idea (IntE,Q2) as well as 'an incredibly retrograde step' (IntJ, Q2). For these reasons, it was recommended that the application and hearing fees should be heavily reduced (even up to £50) or removed (IntC,Q2; IntF,Q16; IntM,Q16; IntQ,Q16; IntR,Q16).Otherwise, it was suggested that fees could be used as a means of encouraging settlements; these would be payable after the preliminary hearing, but before going ahead with the case as well as being proportionate to the length of the hearing and equally shared by both claimant and respondent (IntK,Qs2,16). On the other hand, it was mentioned that the fees are appropriate only for high-value claims and multi-party claims and not for cases such as arrears of wages, whistleblowing, unfair dismissal or harassment claims (IntM, Q16).

The majority of the interviewees believe that the underlying intention and the most likely effect on workers is the number of claims to be curtailed severely before tribunals (IntD,Q3; IntM,Q2; IntA,Q3; IntB,Q2; IntH,Q1; IntF,Q2; IntG,Q2; IntI,Q2; IntM,Q2; IntQ,Q2; IntR,Q2). It is also expected that workers' anger "will be displaced and come out in strange ways" if not heard (IntM,Q2). Particularly, IntG (Q3), IntE (Q2), IntB (Q2) and IntJ (Q3) said that the fees will most likely deter litigants in

person, those who bring bottom-end claims, workers at the lower end of the pay-scale as well as those who bring frivolous, unmeritorious claims. In the latter case, IntE (Q2) supported that the claims are normally brought by 'crazy' claimants who are very hard to deter by mere financial penalties. Considering the present economic situation, IntA (Q16) proposed that vexatious and unmeritorious claims (s.6.4.2) should be 'squeezed out' of the system because they are a cost to industry that reduce Britain's economic position. IntI (Qs2,3), based on own experience, shared that in the opposite case, for those who pursue claims - either because they are meritorious or they expect to have a tribunal hearing anyway (IntB,Q2; IntA,Q3) - 'it is worth betting the money' they stake. Lastly, IntK (Q3) was very confident that claims will not go down due to the imposition of fees, but they will encourage more people to join TUs.

This burden of fees on workers was also considered in conjunction with the current recession. It was argued that because tribunal litigation is said to reflect the economic cycle to some extent, there is a low level of desire to risk having 'a contested litigation' as 'litigation is as risky as love, war and the high seas' (IntM,Q3). Therefore, reversion to wildcat strikes and demonstrations are also possible "if the steps to bring us out of recession fail and the ETs are not there to mop up and properly judicialise those disputes" (IntM,Q3). As stated by IntP (Q2), the issue of fees will be subject to review in time. Also, the possibility for a significant cut or removal of those fees once a new Labour Government comes into power was stated by IntM (Q2) and IntQ (Q16).

Another reason for a worker to hesitate to bring a claim is when he or she knows that the costs for doing so are more than the expected compensation (for example, "pay £1,300 odd pounds to bring a claim and complain about a couple of weeks of wages which is worth £600") (IntQ,Q2). A possible solution would be a worker's entitlement to a fee waiver (remission) (s.6.4.2); nevertheless, this is questioned as the remission scheme seriously limits his or her entitlement (IntR,Q2; IntF,Q2; IntI,Q2).Additionally, some TU officers and academics said that the extension of the qualifying period (s.6.4.5) is a ludicrous political act; but, there were some experienced consultants and union lawyers who supported that it is acceptable as it does not apply to all tribunal cases and it is an opportunity for a claimant to stay longer in the job. Particularly, it was mentioned that this measure is 'a disgraceful, ridiculous political act' and a reason for workers, especially those in the least secure employment, to be deterred from bringing

a claim (particularly an UD claim) because it leaves them unprotected[56] (IntC,Q2; IntO,Q3; IntR,Q2). IntF (Q2) said that 'this is a legal tokenism'; an impression is given that the Government is doing something significant to reduce frivolous claims. IntC (Qs2,3,16) added that the fact that there is no qualifying period of service in whistleblowing, discrimination cases and in bringing UD claims for political opinions was a very good step. In relation to this, it was suggested that there should not be an extended qualifying period for UD cases since there is no qualifying period for most European countries; hence, a shorter period of time should be accepted. In a few other cases, this measure was accepted as a good measure by the interviewees because it does not apply to all types of cases (IntA,Q3) or because it may be regarded as 'an opportunity' for workers not to leave their jobs (IntF,Q3).

Generally, as the interviewees reported, it is quite a frightening and alienating experience for (unrepresented) workers to go to the ETs (IntA,Q3;IntE,Q4). Represented workers feel more confident as they are more detached from the process and do not have a general sense of unfairness and lack of justice (IntR,Q11; IntH,Q13). It is noticed that workers become obsessed with bringing their claims[57] (IntP,Q7; IntA,Qs1,6; IntB,Qs7, 14; IntC,Qs1,7, concluding remarks; IntG,Q3) and concentrating on what they call 'justice' without focusing on how to get their next job (IntF,Q4). Sometimes, workers feel happy because they have 'their day in court', even if the case is lost or no compensation is awarded (IntC,Q15; IntA,Q13; IntB,Q11; IntJ,Q4). Or they feel relieved when they have a few private minutes with the ex-employers (IntE,Q15) and angry when they believe that there is 'a conspiracy in existence' (IntE,Q4).

It was also shared that one of the most normal reactions is being intimidated by the formality of the whole experience (IntA,Q13). The isolated worker is in a bit of a 'maelstrom' (IntD,Q13), under enormous amount of mental strain (IntF, Q4) because he or she does not know what is going on in the ETs (IntE,Q4). As the IntE (Q3) said, the worker has the burden since:

> *the sheer physical and intellectual complexity of mastering six bundles of documents as part of the preparation of a case is a much greater demand that it once was.*

[56] Three million people in the UK have lost out on job security rights.
[57] Though less obsessed in race, sex and disability discrimination cases due to fear of adverse publicity.

Not only do the workers feel scared, stressed, lost or crestfallen when they go to the ETs, but also when they go to their solicitors' offices due to their ignorance of those justice systems (IntC,Q3; IntL,Q13; IntJ,Q4). For instance, they may be anxious due to the length of time that needs to be spent on an ET claim (over 6 or 12 months) so as to reach a tribunal (IntR,Q4). In addition, they become angry and frustrated, if they fail to identify important legal issues (IntH,Q4) or feel befuddled about the rules of evidence because they do not know that they need to produce evidence to make an allegation stand up (IntJ,Q13). IntG (Q1) admitted that the percentage of the success rate of unrepresented workers is tiny; hence, "a million miles away from the expectation when tribunals were set up in the 1970s". In other words, a worker without 'an experienced guide' is similar to 'climbing a mountain or travelling through any desert, as IntQ (Q13) said.

The interviewees also gave an idea of what workers expect after addressing to the ETs. It is believed that their expectations from the ETs are 'incredibly high' (IntQ,Q15), completely 'out of kilter' (IntH,Q15) and 'nebulous' (IntN,Q15). It was pointed out that claimants do not put up with feeling wronged these days or are prepared to take 'no' for an answer, compared to the 1970s (IntB,Q1).

In relation to the final tribunal outcome, the interviewees supported that unrealistically, workers mainly expect to win because there is a sense of 'a need for justice' (IntR,Q15). This means that they either think that they can clear their name, have their day in court, ask the questions they want and feel better, get vindicated for their position or exoneration, be able to look their employer in the eyes, feel heard in relation to something that has deeply upset them, feel that they have been proved right or be found correct in their beliefs (IntE,Q15; IntD,Q15; IntI,Q15; IntL,Q15; IntO,Q15; IntQ,Q7;IntR,Q15;IntC,Q15;IntG,Q15;IntH,Q15;IntN,Q15;IntP,Q15;IntJ,Q15).In other words, they believe that the tribunal will prove a therapeutic experience; IntE (Q15) shared that "this is their chance to confront the 'evil' ex-employers and make them understand how badly they have behaved and how they have hurt them". Moreover, IntA (Q15) mentioned that workers also expect that "the tribunal has not been smiling at the employer's representative all the time and scowling at the claimant, and the body language of the tribunal is appropriate". Hence, when they lose the case, they feel that they were not treated well or they blame the judges and walk away from the courtroom feeling unhappy (IntA,Qs4, 13; IntC,Q15; IntD,Q13; IntB,Q15; IntH,Q15). According

to IntQ (Q15) and IntP (Q15), workers believe that tribunals have ‘mystical powers’ to discern the truth and reach a fair outcome, but then they become disappointed when they find that they do not. In addition, it is noticed that despite representatives’ warnings, they never anticipate how unpleasant the experience of giving evidence in a public tribunal and facing cross examination can be (IntI,Q4; IntK,Q15). They believe that the hearing will be in private and the press will not be involved (IntK,Q15; IntJ,Q15). Lastly and most importantly, by being influenced by all these ‘fake’ stories that are covered in the newspapers, they expect that they will recover millions of pounds for bringing claims or that they will get the compensation paid without difficulty (IntG,Q15;IntH,Q15;IntK,Qs15,2;IntP,Q15). IntE (Q2) said that Government’s intention was “to ensure that everyone bore their fair share of the production of this access to justice”.

Therefore, it is understood that, based on the interviewees’ tribunal experience, apart from the existence of a number of financial costs (especially that of fees), the recognition/presence of negative emotions from the side of workers is evidence of a non-efficient ET system.

8.2.2 Equity

In relation to ‘equity’, the interviewees referred to the following issues:

a) Whether there is access to justice for all workers who address to the ET system, considering the recent legislative changes
b) The disadvantaged groups in the ETs.

With regard to equity, an issue that was revealed from the discussion with the 18 interviewees was whether all workers have equal access to justice, i.e. the ETs. Overall, IntO (Qs1, 2, 4, 6) and IntL (Q2) described the new legislative changes (i.e. increased fees, legalism, judges sitting alone, extension of the qualifying period for UD cases, complications in giving evidence) (s.6.4.2-6.4.5) as a ‘tragedy’ due to people’s alienation from access to justice. Nevertheless, the issue of fees remains the most crucial issue which deters workers from accessing the ETs.

IntE (Q2) supported that a Government that cannot give its citizens access to justice is a bad one. Conversely, IntJ (Q2) held that in any free society, all individuals have the

right to bring a claim and no one thinks that it is frivolous, but only important. IntJ (Q2) supported the same by saying that Government's intention was not to stop frivolous claims, but all claims. It is also perceived that in some respects the measure of fees might be good in cases where judges see that a large number of cases have no merit at all or when there are good cases but they seem to have no factual basis (IntD,Q3). IntM (Q14) and IntN (Q14) pointed out that the current stage of the economic cycle allows only few workers to enter the ET system, unless they are desperate or feel that they have a strong chance of success. It was generally accepted that the situation remains difficult for unrepresented workers or workers with lower calibre representation compared to represented employers. Nevertheless, a senior judge was more optimistic since the judge perceives that now both parties have more experience in representation than before. Furthermore, a senior officer and experienced union lawyer encourage claimants by saying that manual workers will not be bad in court because of their bad upbringing and job.

More specifically, the interviewees referred to those categories of workers that are mostly disadvantaged when they experience the ETs, namely, the ethnic minorities, women workers, old people, disabled workers and those who suffer from mental illnesses or the effects of social exclusion.

First of all, they identified those workers that are disadvantaged in terms of socioeconomic standing (IntD,Q4;IntM,Q6; IntO,Q4; IntP,Q6) and are excluded by reason of their unfamiliarity with the English language (IntH,Q4;IntL,Q15;IntM,Q6). Particularly, it was marked that it becomes more difficult for the ethnic minority groups (s.2.2.3) (in large urban areas). In employment practice, as described by the interviewees, those who face a 'cultural shock' (IntE,Q8) are the Polish immigrants who massively participate in TUs (IntJ,Q4), the Roma or Irish travellers (IntM,Q6), people from parts of the African continent (i.e. Nigeria and Ghana) or those from India who use the English legal system. Namely, those workers that do not have English as their first language or they speak rudimentary English and are in marginal employment or have zero hours or illegal contracts[58] and it is difficult for them to establish an employment relationship to claim rights or comprehend/present their case, even with the help of interpreters when requested (normally they refuse such service because they

[58] Working without work permits or being paid cash in hand so they have not paid tax.

do not want to look stupid) (IntB,Q6; IntH,Q4; IntE,Qs6, 8; IntJ,Q4; IntG,Q6; IntF,Qs6, 14; IntI,Qs6, 8; IntL,Q6; IntM,Q6; IntP,Q6; IntQ,Qs6, 8; IntR,Qs3, 8). IntM (Q8), IntJ (Q8) and IntO (Q8) clarified that expatriates' and (black) ethnic minorities' cultural norms and working experiences cannot always be fully understood by tribunals, especially when predominantly populated by white, upper-class men that sit alone. Hence, they highlighted the need for judges to pay more attention to the 'cultural norms' to eliminate 'sensitive issues', by double checking their judgements and trying to avoid stereotyping. However, as IntQ (Q8) confirmed, tribunals are not racist, problematic or corrupt but there is 'an otherness to the process'.IntI (Q8) added that "more vivid racism in the UK is likely to be viewed if ethnic minorities with personal protected characteristics are not culturally protected".

Apart from the ethnic minority workers, the interviewees reported that those workers who suffer from the effects of social exclusion (such as poor education, bad luck in their educational choices, no education beyond the age of 15 or 16, bad job and so on) are also disadvantaged in the ETs (IntH,Q4; IntA,Q6).

In particular, members of the working class, i.e. unskilled, low skilled or skilled but manual workers (s.4.2.1) are in an awkward position and face huge problems. For instance, it is very foreign to explain themselves in the logical way that lawyers would expect (IntA,Q4) or 'to see the wood for the trees' (IntC,Q6), compared to white-collar workers who have better chances due to their middle-class education and the nature of their profession with the condition that they have representation (IntE,Q6; IntQ,Q6; IntC,Q11; IntH,Q4; IntJ,Q4; IntG,Q6; IntM,Q6). Nonetheless, as IntA (Qs4, 14) said, there are no implications that a manual worker will be bad in court because of his or her bad upbringing and a bad job.

Another category of workers that are disadvantaged in the tribunals compared to others (according to the interviewees), is those that are disabled (i.e. have learning disabilities and so on) or suffer from mental illnesses and psychiatric injuries (IntK,Q14; IntH,Q14; IntI,Q6; IntE,Q6; IntN,Q6; IntO,Q14; IntQ,Q6; IntR,Q5). In all cases, the process is experienced negatively because it becomes very stressful for them to disclose intimate personal secrets or intimate parts of their medical history in a harassment case (IntH,Q14); IntI (Q6) shared that "delusional interpretations cannot get claimants very far…a lawyer is needed and credible medical evidence". In addition, there are practical

problems; for instance, it is difficult for someone who has difficulty in sitting down for a long period of time or has got a hearing impairment or is partially sighted (IntN,Q6). Even if there is no duty in law, efforts are made by the tribunal to have a lot of breaks, to ask questions periodically to make sure that the party is still engaged with the proceeding. As IntN (Q6) said, this does not really work. However, its effort to ensure spaces which are accessible, not too formal or intimidating, are recognised (IntR,Q3).

Discussions were also made about women and men workers' (s.2.2.4) position in the ETs. Most of them agreed that there are no differences in workers' ability to manage the ET process from a gender point of view, in the sense that women are not considered less capable at understanding or expressing themselves or they are not treated differently from men or they have legal representation (IntD,Q4; IntH,Q9; IntK,Q9; IntE,Q9; IntG,Q9; IntF,Q9; IntI,Q9; IntL,Q9; IntM,Q9; IntO,Q9; IntQ,Q9). However, those involved in TU representation or responsible for relative policy on employment law and TU rights admitted that women are reluctant to pursue and support an ET claim due to their submissive behaviour compared to men, the prioritisation of family responsibilities, their worries about career prospects and health, their belief that they cannot prove their case or even their weakness to identify an issue that has arisen at work. To address and clarify the issue, the interviewees referred to men and women workers' behaviour in the ETs. Men were described as:

> *wander[ing] in, botching up their case, come over as rude, aggressive, boorish and arrogant, ask lots of mean and dastardly questions of their managers and at the end they feel like they have got their point across.* (IntN,Q9)

In contrast, the interviewees noticed that women tend to prioritise their family responsibilities, worry about their career prospects, have submissive behaviour[59] or believe that they cannot prove their case (IntJ,Q9; IntR,Q9). Hence, they tend to refuse to 'rock the boat' and they do not complain to their employer. Additionally, as IntJ (Qs9, 13) said, it is sometimes questioned whether women realise that there is a problem at work without having their unions or others' people help. For instance, according to a survey (Equal Opportunities Commission [EOC], 2005) that IntR (Q9) referred to, it is shown that in the case of discrimination during pregnancy, women workers usually do not bring a tribunal claim, either because they have not felt that they

[59] For instance, they put up with difficult work behaviours, work for fewer hours than they really need or choose a bad job which fits with their home life.

have experienced any problem or they are concerned for their health and their unborn child. In relation to the above, IntG (Q9) supported that it does not matter whether low paid or high net worth women understand what is going on, since they have legal or union representation.

Lastly, IntE (Q14) also considered 'age' as a factor which influences workers' ability to handle their case. Thus, IntE reported that the older and more mature they are, the less likely they are "to be phased by something as weird and artificial as an ET".

Thus, it is doubtful that all workers have equal access to such extra-workplace system after what the interviewees shared. It appears that the ET system is not an equitable system if it is experienced negatively by the majority of workers. In relation to this issue, IntH (Q16) recommended the training and education of the users of the ET system regarding their rights and entitlements through the use of accessible YouTube guides and seminars that could be initiated by tribunal judges.

Additionally, it was suggested that there should be an attempt to (partly) restore 'assistant legal advice' (IntQ,Q16) and encourage the provision of paid 'tribunal-based advocates' (IntC,Q16; IntH,Q16) to help the workers in this difficult process. More specifically, some of the interviewees supported this option because they are either convinced that the tribunal system has become inadequate in recent years in terms of effectiveness and helpfulness (IntF,Q16) or that advocates' removal lengthens a hearing by a day because somebody is not represented, which seems 'daft' instead of a day's worth of a legal aid lawyer, CABs, organisations with comparatively modest wages (around £28,000). Furthermore, compared to employers who normally secure legal expenses insurance[60] by paying a subscription, workers have no such equivalent, apart from what is offered from car or household insurances (IntE,Q16).

A final recommendation with regard to equity is the relocation of some tribunals as venues, in areas that are easily accessible to the users of the system (IntC, concluding remarks).

8.2.3 Voice/representation

Under the last heading of 'voice', the following issues emerged from the interviews:

[60] Through DASS, RBS Mentor Services, Peninsula Business Services, Riverview Solicitors.

a) The significance of tribunal representation
b) The imbalance of resources between the represented employers and the unrepresented workers
c) The various types of tribunal representation that are offered to workers
d) Legal aid
e) The removal of jury.

In general terms, almost all of the interviewees pointed out how ‘extremely important and vital’, ‘ideal’, ‘of great value’, ‘a completely transformative experience’ representation is for both parties at the ET hearings as long as it is ‘decent’ (IntA,Q10; IntC,Q10; IntD,Q10; IntE,Q10; IntH,Q8; IntI,Q10; IntO,Q10; IntR,Q10; IntN,Q4). Particularly, they supported that representatives are always needed as ‘a steady hand alongside the claimant at a hearing’ (IntA,Qs10,16) because they can ‘compensate for all the difficulties’ and deal with their clients’ feelings as ‘all are weighted in favour of the employers’ (IntL,Q13; IntQ,Q10). They referred to their high standard of legal or union representation (s.4.2.1) (IntB,Q11; IntI,Q11; IntD,Q12; IntF,Q10). However, they also discussed cases of bad tribunal representation, for example, not having the right skills and experience, and being poorly prepared (IntD,Q10; IntG,Q3; IntB,Q10; IntI,Q11; IntP,Q13). On the other hand, IntB (Q10) said that it is not a matter of bad representation, but rather of occasions where solicitors and barristers have not thought of something, and so the judge normally encourages them to pay attention to other possible scenarios or relevant points. IntC (Q1) reported that now both sides have more experience in representation than before.

Hence, all these general conclusions about the significance of tribunal representation (s.6.4.3) or the work quality of representatives pulled to the surface other problems that workers need to confront. The interviewees clarified that there is an imbalance of resources between unrepresented workers or workers who have a lower calibre representation, and represented employers. The most important reason for this is that the latter are considered experienced users of the ET system who are supported by city solicitors that are extremely aggressive in litigation (IntN,Q4). Compared to litigants in person, employers are becoming more sophisticated in the sense that they understand the process better, they realise the need for a good representation, which they can afford, and they choose their representatives carefully (IntC,Qs5,10, concluding

remarks). Thus, a great disparity is noticed that causes injustices and makes representation necessary for all workers (IntC,Qs5, 10, concluding remarks). The fact that the need for lawyers' assistance in the ETs has become more demanding shows the difficulty of workers to represent themselves in the hearing, the fewer chances for success and the increased formalities in the ET process.

More specifically, it was reported that only with legal representatives' assistance, who deal with work for 'strange creatures' (IntF,Q15), do workers have a greater chance to succeed in their claim, if they can afford it. The former knows what the purpose of each of the stages is, how to set the scene and go through a chronological list. They provide sensible clinical advice at an early stage, warn workers of all risks, answer difficult questions, identify relevant points or drop no winning points, stop, slow down or re-iterate a point, prepare good skeleton arguments, give written closing submissions, reassure clients about what/why is happening and explain to them whether the case is going well or not (IntE,Qs4, 11; IntA,Q1; IntC,Qs10, 11; IntF,Qs10, 11; IntJ,Qs4, 10; IntG,Qs13, 4; IntI,Qs4, 10; IntM,Qs4, 10, 11; IntQ,Q11). When multiple claimants are involved in the process, representation is considered not only appropriate but necessary (for example, in equal pay, TUPE, and redundancy cases) (IntM, Q10).

Reference was also made to the role of TU representatives who, according to some interviewees, tend to be more sensitive about claimants than other representatives who tend to run a case 'for their own reasons rather than in the best interests of their client' (IntJ,Qs15,4,1). Also, they have more control over the process as they are less mercantile about the process (IntN,Q12). Moreover, they can 'filter' the cases and act as a very important 'brake' on management behaviour (IntJ,Q10). Sometimes, they are considered less effective because ET representation is 'a skilled task' (IntQ,Q12),

However, another big question that was raised was whether TUs can support workers at the ETs as much as they did before (IntA,Q3; IntG,Q2), especially now they have to support thousands of workers and the money is very tight amongst TUs (IntF,Q12). As was said, TU members have greater chances for such representation (IntJ,Qs3, 10; IntO,Q4), whereas unrepresented workers become more disadvantaged due to the reduction of TU representation that has been replaced by the 'lawyerfication' or

'lawyerisation' or 'professionalisation'[61] of the ETs, the biggest change since the 1970s (IntH,Q5; IntI,Q5; IntQ,Q1). Big TUs such as UNISON and Unite the UNION started using lawyers in the hearings in the early 2000s. The reason was twofold: firstly, feeling a sense of inequity without having their lawyers in the hearing against employers' lawyers; and secondly, having no time to recruit new union members if they are busy with the handling of a case and the need to sit in a hearing for at least three days (IntJ,Q1). Now, it is believed that all unions are committed to paying fees for their members and ensuring that the introduction of the Government policy does not have an impact on 'access to justice' (IntR,Q12; IntA,Q3). Characteristically, it was shared that "…instead of having a 55% chance for success… you have now got to have an 85% chance of success before we will support you" (IntA,Q3). On the other hand, it is also seen that a lot of unions' legal departments focus on big multi-claimant claims (i.e. class actions about holiday pay, equal pay); again, this shows how difficult it is for workers to ask for representation for an individual claim (IntE,Q12).

Lastly, the interviewees did not forget to refer to the usefulness of the CABs, FRU, BPBU, LawWorks (s.6.4.3) as they believe that these can provide some assistance to workers; however, because their limited resources, there is a need to be more selective (IntD,Q4; IntJ,Q10; IntM,Q4). Alternatively, it was said that law centres and workers' friends or relatives' assistance could be also considered, depending on their 'experience of bureaucracies' (IntA,Q10; IntB,Q11). Unfortunately, quite a few of them made clear that there is no apparent 'appetite' for extending legal aid (s.6.4.3) to the ETs to those that cannot afford to have representation (IntB,Q6; IntH,Qs1,16; IntF,Qs2, 3,16; IntQ,Q3; IntE,Q16). In fact, IntF (Q16) and IntE (Q16) suggested that the provision of representation to workers should probably be funded by the state, considering that the provision for increasing legal aid would never happen and increasing access to representation is politically undeliverable (IntE,Q16).

The interviewees referred to the pros and cons of all the alternatives that are offered to workers in tribunal representation. Nevertheless, it appears that the cons outweigh the pros in employment practice, by worsening the position of workers, especially of those who cannot afford to pay. Hence, it remains unclear how workers can ensure

[61] The term explains the big increase in the number of lawyers in the UK (approx. 20-odd thousand members now). In the 1980s, the number of labour lawyers was no more than a hundred in the whole country (IntD,Q1;IntK,Q1;IntQ,Q1).

representation that is considered highly important against the powerful and experienced employers, bearing in mind all the difficulties that have been described so far.

At this point, it is important to report interviewees' opinion about another equally important issue that worries workers a lot, namely, the removal of the industrial jury (s.6.4.4), the 'breakdown in tripartism' (IntM,Q1) which has now been replaced by a sole employment judge[62] (the default position). Some senior judges agree that it was a correct measure because the jury was expensive and inappropriate, whereas some other judges, TU representatives and other consultants find it necessary. In general terms, the removal of non-legal members was described as 'outrageous', 'a mistake', 'a huge loss' (IntJ,Q2; IntO,Q2; IntR,Q1) and 'a non-sensible solution' if the Government intends to escape from legalism (IntF,Q1). IntE (Q2) talked about a general Governmental trend where "non-legal members have come to be undervalued and employment judges have come to be overvalued".

More specifically, some interviewees were surprised at the removal of non-legal members. IntF (Q16) and IntR (Q16) recommended that is vital to have a full panel hearing with the return to the role for non-legal members. Tribunals were seen as a forum that both management and labour owned because of the wing members (IntM,Q1). It is believed that because the judges are normally isolated, concerned with their own needs, the majority of them having started out in life as barristers, they need people who can tell them what is a reasonable response of a reasonable employer ('band of responses approach') (IntJ,Q2). It was supported that it is critical for employment judges 'to be able to make those judgement calls' (IntR,Q1). Therefore, this is feasible with the help of those people who are directly involved with employment practices because their presence is a good influence on the way the system operates (IntC,Q1) and helps lawyers in ensuring that 'everything stays on the rails legally' (IntE,Q1).

In the 1960s, extremely competent judges, who were previously in overseas appointments in the Commonwealth or the Empire, came back to the UK and were put in industrial tribunals (IntM,Q1; IntK,Q1). Despite their high competences, they were considered less skilled compared to current employment judges who are much better trained in employment law (IntF,Q1; IntM,Q1; IntK,Q1). Now, the employment judges

[62] Especially, in UD and discrimination cases.

are no longer ET chairmen as they used to be; hence, it is becoming more judge-made. Things are tighter and more controlled, because the judge is under pressure to be quick and efficient whilst having to achieve equality of arms - a level of playing field[63]; thus, parties use fixed periods of time to present and explain their case fully, to vocalise their position[64] (IntF,Q2; IntA,Qs4, 14; IntC,Qs4, 5; IntD,Q10; IntE,Qs4, 5; IntQ,Q16). Most importantly, the unrepresented workers, as reported by IntG (Q2), rarely request a full panel because they do not know that they have such a right or they have the misperception that it should be requested only when there is an exceptional reason. On the other hand, some other interviewees expressed their belief that the jury was never appropriate because it does not give reasons as the ETs do (IntB,Q2), but it is also expensive in terms of tribunal service process (IntD,Q2).

The majority of the interviewees highlighted wing members' experience and contribution in such a daunting process. As it was shared, their presence is considered critical and their ban a mistake and a big loss for workers, especially now that judges are under pressure to deal with a number of ET claims.

Table 8.14 below summarises and categorises my research findings based on Budd and Colvin's framework.

[63] It is known as the equalisation process.

[64] Where the judge realises that a worker has a very weak case or is unrepresented, some of their tactics are: a) to ask the claimant to read the written statement and give further explanation if the statement is poor and does not deal with important points (IntA, Q14); b) to be more critical of the employer by asking him/her difficult questions (IntC, Q16); c) to ask the claimant before the hearing, in the preparation phase, whether they have some representation and if not, to recommend other possible alternatives (for example, ELAAS advisory scheme) or highlight the need for professional help (IntB, Q11; IntH, Q16); or d) to try to stop the claimant from being unfairly cross-examined (IntE, Q13). All of this is contingent on who is doing it; therefore, it is a matter of chance whether claimants get this or not.

Table 8.14: The ET system through Budd and Colvin's metrics (Source: Author)

EFFICIENCY	EQUITY	VOICE
Bureaucratic, prolonged, legalistic, complicated, adversarial (winner-take-all) and formal ET process Financial burden of issue and hearing fees (fees>expected compensation) considering: - Workers' current employment status (e.g., unemployed or marginal employment or in zero hour or illegal contracts or in difficult financial position) - Post-crisis effects (e.g., reduction of standard of living, low incomes) - The fact that the remission scheme is available under specific circumstances - The extended qualifying period and the increased risk of losing a job Emotional upheaval always involved (isolation, stress, depression, anger, unpleasant experience) Complications in giving evidence	Implications as to whether claimants have 'access to justice' due to the imposition of 'prohibitive' fees Potentially adverse effects on claimants with protected characteristics (i.e. ethnic minorities, women workers, old people, disabled workers, those who suffer from mental illnesses or the effects of social exclusion)	In self-representation, risk of failing to focus on important legal points, presenting irrelevant evidence and seeing a number of cases dismissed Paid representation by trade unions, barristers, solicitors, law centres, trade associations (in conjunction with the payment of fees) Union representation at low levels due to unions' inadequate financial resources to cover the unreasonably high fees Limited assistance representation by CAB, FRU, BPBU, LawWorks services Absence of legal aid Ban on non-legally qualified judges from the tribunals ('judge sitting alone')

In conjunction with the interviewees' reflections, it is worthy to consider what the five larger UK unions have said in the news media about the ET reforms (see below). The General Secretaries of the five unions described the legislative changes (see s. 6.4.2-6.4.5 above) that were recently introduced. They mainly gave emphasis on their disastrous effects on workers and showed their opposition to these reforms. The measure that attracted the most criticism is that of the imposition of issue and hearing fees. Figure 8.18 below presents some of their comments.

General Secretary Dave Prentis, UNISON	"*The introduction of punitive fees for taking a claim to an employment tribunal would give the green light to unscrupulous employers to ride roughshod over already basic workers' rights*" (Source: SOLICITORS JOURNAL, 2013, online)
General Secretary Len McCluskey, Unite the UNION	"*What we are seeing today is injustice writ large as this worker-bashing Government takes a sledgehammer to workers' rights - this is a throwback to Victorian times. Seeking redress for unfair dismissal and discrimination and other injustices in the workplace is a fundamental human right – but now ministers are putting up insurmountable financial hurdles for working people in pursuit of justice. We estimate that this will affect 150,000 workers a year. This is not an aid to economic recovery, but a means to keep working people frightened and insecure*" (Source: BBC NEWS, 2013, online)
Senior Organiser Andy Prendergast, GMB	"*The imposition of such fees represents the latest in a number of attacks on employment rights by the Government*" (Source: INDEPENDENT, 2013, online)
General Secretary Frances O'Grady, TUC	"*These reforms are part of a wider campaign to get rid of workers' basic rights at work. Its only achievement will be to price vulnerable people out of justice*" (Source: Sky NEWS, 2013, online)
General Secretary Mark Serwotka, PCS	"*The changes were a 'bad bosses' charter* " (Source: Bennett, 2013, online)

Figure 8.18: Opinions of UK trade unions about the ET changes

In the following section, the ET system is evaluated based on Budd and Colvin's framework.

8.3 Evaluation of the ET system through the application of Budd and Colvin's metrics

Apart from the thorough exploration of the existing literature on employment conflict resolution (Chapter 5), the discussion of the literature on the ET system (Chapter 6) and the research findings from the interviews (Chapter 8), what is also interesting to see is how the scale is tipped after employing Budd and Colvin's (2008) fundamental metrics (i.e. efficiency, equity and voice) to evaluate the current ET system.

In terms of *efficiency* (s.5.3), it seems that the various financial and non-financial burdens in combination with the insufficient measures offered by the state with the purpose to assist low-paid claimants outweigh the underlying purpose of the Donovan Report to offer relatively cheap and speedy services to those involved in an employment dispute. Moreover, if it has been transformed into a more legalistic,

interrogating, daunting, technical, adversarial, inquisitorial, complex process compared to that of 1970s, it is no longer an informal and easy process.

In addition, with the sudden imposition of issue and hearing fees, it is questioned whether all claimants have access to justice or whether the ET system is as *equitable* (s.5.3) a system as it is perceived, especially when there are implications that some claimants (i.e. ethnic minorities, women workers, disabled workers, those who suffer from mental illnesses or the effects of social exclusion) are not treated equally and fairly.

Lastly, in terms of *voice* (s.5.3), it appears that claimants have various ways to voice their problems in an ET process (i.e. through legal professionals, unions, themselves and so on). However, they are relatively exposed either:

- when they act as litigants in person because they fail to comprehend or are unaware of the stages of such a complicated process (except if they can afford to have representation or follow the guidance of relative pro bono services) or
- when they cannot receive the expected help from unions, due to the finite financial resources which are not enough to support all claims, except for those with sufficient merits.

In addition, the absence of the non-legal members from the tribunal seems to disadvantage workers as it is believed that a fair hearing cannot be ensured.

Hence, the data that were collected from the 18 senior legal professionals (s.8.2) not only helped in gathering rich material regarding workers' experience in the ETs, but also in evaluating the ET system effectively. In extent, it was utilised in refining Budd and Colvin's model (see Chapter 9).

8.4 Conclusions

Based on interviewees' collection of thoughts, reflections and experiences, it is confirmed that the ET system has changed significantly over the last forty years since it has now turned into a more legalistic, adversarial, formal and complicated system than before, at which employers are getting better. It can no longer be considered as a distinctive feature of the British system (of administrative law) if workers' rights

cannot be protected and settlements or reinstatements are not encouraged as the primary and most important remedy.

Considering the current economic situation, it appears that there are still ‘gaps’ in the operation of the ETs, especially when used by workers. There is no doubt that the current continuous changes, especially the imposition of fees, are against workers’ interests, as supported by the interviewees and the General Secretaries of the TUs in the UK. These changes demonstrate that we are re-directed from the original purpose of the Donovan Report.

There should not be a single representational justice system which discourages disputing parties from defending their rights, de-motivates, and stresses them from the start without justifiable reason. However, it is confirmed that it is such a ‘hassle’ for a worker to look for representation, find ways to pay all the expenses, educate themselves as to how to win the case and so on. Hence, even workers’ behaviour at the ET hearings confirms the fact that they experience the current tribunal system negatively.

Not a single worker will ever feel protected if there are no sensible and equal options to settle an employment dispute. Without any meaningful improvements in the ET system, employers will always be seen to be under the protective umbrella, whereas workers as abandoned entities which have to face unavoidable bureaucratic and other stalemates.

Therefore, it is possible for a worker not to consider pursuing an ET claim because there are/is:

1) no money due to his or her current employment status
2) no prospect of reinstatement
3) no entitlement to remission if the majority of workers earns an average income
4) no representation at all
5) no support from unions
6) a risk of being accused as a vexatious litigant
7) a risk of not being paid in case of a successful case
8) no legal aid
9) penalties only for claimants
10) absence of union panellists with industrial experience, a unique feature of the ETs to combine excellent legal knowledge

11) a risk of bad health due to the lengthy, stressful and adversarial process
12) low success rates
13) greater expenses involved and less compensation.

It seems from all the above that there is an urgent need to improve the educational training provided to employees regarding their rights, the processes available within and outside the workplace, the expected/possible outcomes in both cases, before reaching the ETs.

Finally, Chapter Nine outlines the general concluding remarks about the findings, the contributions, the recommendations and the limitations of this study.

Chapter 9: CONCLUSION

In the previous chapter, the findings that derived from primary research were analysed. After employing Budd and Colvin's conceptual framework, it was concluded that the ET system lacks voice, equity and efficiency. Thus, it was confirmed that this individualised extra-workplace representational system is not an ideal justice system for workers as it disadvantages them.

In this chapter, I draw my conclusions.

9.1 Summary of the study

To see what brings workers to the ETs and why they seek extra-workplace resolutions to their grievances, the study starts with the exploration of the causes of conflicts at the workplace through the examination of existing relevant theories at collective (Chapter 2) and individual levels (Chapter 3). It is shown that both collective and individual employment conflicts have social conflicts. Then, it proceeds with the discussion of existing employee representational systems and the identification of the most optimal conditions that exist in the resolution of workplace grievances (from the workers' point of view) (Chapter 4). It appears that collectivity works best for workers for all workers (i.e. collective voice, participation, mobilisation, organisation, action, collective instruments). Nevertheless, it is noticed that in the last fifty years there is a continual decline in workers' and unions' collective power by giving rise to the increased use of ETs (Chapter 4). Existing DR theories and processes, the alternatives to mobilisation that are currently available to an individual worker are also discussed in Chapter 5. It is concluded that none of the ADR processes is an ideal process for workers.

Then, Budd and Colvin's (2008) framework is employed so as to evaluate the only available extra-workplace system, i.e. the ET system (Chapter 5). In conjunction with the discussion of the existing literature on ETs and the analysis of secondary data, it seems that the ET system is not an ideal justice system for workers (Chapter 6). In Chapter 7, which deals with the research design of this study, justifications are provided regarding the employment of interviews (rather than of any other method) and the decision to interview employment experts instead of workers. After applying Budd and Colvin's framework, the primary data confirmed that the ET system is not an ideal

justice system for workers (Chapter 8). Overall, the study provides the whole journey from the time an employment conflict occurs until its resolution in an ET.

Below, the sections 9.2.1-9.2.3 refer to the literature that is (not) confirmed by the findings in accordance with the three metrics of Budd and Colvin.

9.2 Which literature is confirmed by the findings and which is not?

9.2.1 Efficiency

In all cases, the findings on the nature of the ET process and its difficulties (s.8.2.1, pp.143-146) as well as on the behaviour of workers in the ETs (s.8.2.1, pp.149-151) showed that the ET hearings are an unpleasant experience for all workers. The interviewees often emphasised how difficult, prolonged, frustrating and intimidating the ET process is for claimants because of the complicated law, the lack of legal knowledge and so on. It was also admitted that even the interviewees find the process difficult, intimidating and foreign compared to that described in the Donovan Report in the 1970s. Hence, the literature on the non-optimality of the ET system is confirmed (s.6.5, pp.118-122). Furthermore, it is understandable that it is not possible to talk about an efficient ET process when claimants face such psychological, non-financial burdens (s.6.5.1).

According to what was reported, the literature on the changes of the ET system after the latest legislative ET reforms (s.6.4, pp.105-118) is also confirmed. Particularly, the findings showed that the claimants are burdened with the payment of issue and hearing fees, while at the same time they have to face several restrictions when applying for a fee waiver (thus, some workers seem to be left without any financial support) (s.8.2.1, p.148). In addition to these, the interviewees made known that workers are entitled to compensation and its amount is expected to be less compared to the overall costs that are needed to be paid to pursue a claim (s.8.2.1, p.148). There are also implications that due to the extension of the qualifying period, those who are in the least secure employment are also prevented from bringing UD claims (the largest jurisdiction) (s.8.2.1, pp.148-149).

Lastly, the primary data have also shown that claimants feel a sense of unfairness and a lack of justice, confusion, disappointment, and intimidation by the formality of the process, and anxiety, alienation, hostility, stress, frustration, anger and fear in the ETs

(s.8.2.1, pp.149-151). Therefore, the literature on the affective dimension is also confirmed (s.6.5.1, pp.122-126).

9.2.2 Equity

In addition to the above, the literature on perceived unfairness (pp.36-41) is also confirmed by the findings on the introduction of fees that revealed the workers who normally have greater difficulty in accessing the ET system and enforcing their employment rights, namely:

1) those that are disadvantaged in terms of socioeconomic standing, lack of language competence and are of different cultural, racial and ethnic backgrounds, particularly now that they are experiencing this post-crisis squeeze and the absence of legal aid (s.8.2.2, p.152)

2) those who suffer from social exclusion (i.e. not well-educated, unskilled, low skilled or skilled but manual workers) who due to lack of social and educational status have difficulty in understanding the complicated law/procedural rules and legal paperwork/terminology (s.8.2.2, p.153)

3) women workers due to their submissive behaviour compared to male workers, the prioritisation of family responsibilities, their worries about career prospects and health, their belief that they cannot prove their case or their weakness to identify an issue that has arisen at work (s.8.2.2, p.154)

4) those who suffer from mental illnesses, psychiatric injuries, learning or other disabilities (s.8.2.2, p.153) and

5) the older people (s.8.2.2, p.155).

In relation to whether gender is an issue, feminist theories (pp.22-26) certainly have some application according to some interviewees. The majority of the interviewees claimed that gender stereotyping is not an issue in the ET system as there is no difference in workers' ability to manage the process (s.8.2.2, p.154). However, this was said on the premise that workers will always receive legal or union representation. Hence, it is merely confirmed that women workers feel disadvantaged in the ETs and tend to: a) fail to realise that there is a problem; b) refuse or hesitate to pursue a claim

against their employers, especially during a pregnancy period; c) compromise/accept settlements; d) put up with various work behaviours because they have different priorities from men (i.e. family, children, and preservation of good health); and e) be unwilling to pursue legal proceedings due to perceived lack of skills (s.8.2.2, p.154). Furthermore, the introduction of high fees seems to deter female workers more than male workers since at the time they consider bringing an ET claim, they are usually underpaid or on a part-time basis or in low pay sectors of employment (s.8.2.2, p.154). Thus, the literature on pay inequality between men and women (p.25) is also confirmed.

Moreover, based on the literature on cultural and racial theories, individuals who come from different cultural, racial and ethnic backgrounds are the most underrepresented category of the labour force in the resolution of worker grievances (i.e. feelings of prejudice, exploitation in terms of social class, power, status, but also of race-ethnicity and class culture) (pp.20-22, pp.27-30). Therefore, this is confirmed by the interviewees who supported that those workers who are unfamiliar with the English language and suffer from social exclusion are more disadvantaged than others at the ET hearings (s.8.2.2, pp.152-153).

9.2.3 Voice/representation

It is noted that the most important metric of all is that of voice. Thus far, the literature refers to the significance of voice/representation in working environments (pp.50-59). Namely, it has been shown that when workers act collectively, they have greater power, more chances to protect their interests and support the worker involved in a dispute. They also have more chances to achieve an efficient dispute settlement and fewer chances to be victimised compared to an individual worker. In addition to these, workers feel the need to have the support of their unions or any kind of professional assistance since it is important for them to get advice and representation from people who have relevant knowledge, skills and expertise instead of attempting to discuss the issue directly with their employers. Similarly, the literature that refers to the unrepresented workers who are left unprotected because they cannot afford to pay their legal representatives or respond to other expenses compared to an economically powerful employer is confirmed. The interviewees said that the percentage of success rates for those who cannot afford representation in ETs is low (s.8.2.3, p.157).

The fact that representation is extremely important for all claimants in the ETs was repeatedly mentioned by the 18 interviewees. Thus, based on the findings, it is also confirmed that, not only in the workplace, but also in the extra-workplace systems, voice/representation is the most ideal factor for all users (particularly for the workers).

Indeed, the primary data show that representation is vital in the ETs and that a large number of workers tend to request representation (lawyers, solicitors, TUs, CABs, FRU, BPBU and the LawWorks) (s.8.2.3, pp.156-158). The main reason for that is because:

- employers are frequent users of the ET system and the chances of a successful hearing are low for the claimants
- only the representatives can guide, support, assess the evidence as they are skilled, experienced and detached from the facts of the case and
- the ET process is much more difficult and complicated for claimants as well as hostile, alien, unsympathetic and unpleasant.

Based on the interviewees' tribunal experience, 'the need for a steady hand' is of great value (s.8.2.3, p.156):

- if the legal representative is of a high standard and intends to find a solution to a claimant's problem instead of financially exploiting him or her
- if the TU representative shows the expected sensitivity when handling a claimant's case and cares about his or her interests and
- in the case of multiple claims.

The new findings (as discussed above in s.8.2) point to a clarification required in Budd and Colvin's conceptual framework. What is needed is a rating of the metrics where voice/representation should always come first in the evaluations of DR systems. The issue is not whether there should be either one of these factors present or all. However, it is understandable that an emphasis should be given to the significant role of voice/representation in all conflict resolution systems.

Figure 9.19 below depicts how the voice/representation factor should always supersede equity and efficiency, not only in workplace systems, but also in extra-workplace systems. This simplifies the comparison and evaluation of any mechanisms since the researcher's task (to evaluate DR procedures) becomes easier. Once the researcher discerns the adequate presence of voice in any DR procedure, then we can see to what extent the procedure is equitable and/or efficient and conclude as to whether the user will experience it positively or negatively. Thus, in this case, a worker will less likely experience a DR system negatively. For instance, someone might expect that because male and skilled workers are advantaged due to their gender, high educational status and advanced skills, even if they are unrepresented in ETs, they could have the chance to achieve a successful outcome outside the workplace environment. Based on the findings, it is confirmed that if the worker is a male and skilled, the worker has more chances to succeed than others, but mainly when he/she is represented.

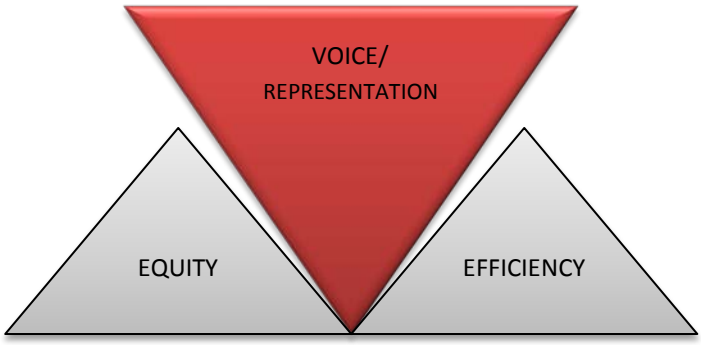

Figure 9.19: A graphical depiction of an improved allocation of Budd and Colvin's factors (Source: Author)

In this study, the primary data make clear that skilled workers may have the ability to understand written agreements and legal documents as it happens in the workplace, but if they do not seek professional representation (and under specific conditions), it is not possible to achieve a successful outcome in extra-workplace environments and particularly in the ETs (s.8.2.2). For both white-collar and blue-collar workers, it is necessary to meet the following specific conditions: to have a good prospect of merit and a capacity to pay costs. Thus, a representative can advise the worker whether there is a good prospect of success and how to win the case (s.8.2.3).

Considering the imposition of fees, claimants need always to consider that:

- in the case of legal representation, the possibility of having representation depends on their economic position (i.e. whether they can afford to pay) (8.2.3)

- in the case of union representation, they can get financial support only if the claim is deemed by the union in the light of its finances to have a high prospect of success (8.2.3)
- in the case of pro bono representation, their representation is difficult since the centres which provide such services are the first ones to suffer from the effects of the current economic crisis (8.2.3).

It seems that the ET system lacks voice, efficiency and equity. As a consequence, workers are left without protection from the law in an alien, hostile and unsympathetic environment, namely, not an ideal world for them, since they are unable to enforce their rights and do not have equal access to justice as the employers. Thus, the Budd and Colvin's conceptual framework is confirmed.

In the next section, I make seven policy recommendations for the better possible improvement of the current ET system.

9.3 How might policies be changed to make tribunals more effective for workers (the 'wish list')?

The idea of setting up a specialist tribunal which will only deal with employment disputes was good. However, the overall picture of the ET system after forty years is disappointing and there is still a need to modify some of the key existing policies to achieve a more equitable and efficient justice system with adequate presence of voice.

By taking into account interviewees' recommendations, I make the following suggestions, a step forward to improve 'voice', 'efficiency' and 'equity':

1) The imposition of the issue and hearing fees does not fit with the 'access to justice' concept. Therefore, the immediate removal of fees is obligatory. In relation to this, the interviewees suggested that the fees should be heavily reduced (even up to £50) or removed (IntC,Q2, IntF,Q16, IntM,Q16, IntQ,Q16, IntR,Q16). Otherwise, it was suggested that the fees could be used as a means of encouraging settlements (IntK,Qs2, 16). Additionally, it was said that the fees are appropriate only for high-value claims and multi-party claims and not for cases such as arrears of wage, whistleblowing, UD or harassment claims (IntM,Q16).

2) CABs should solely be responsible for straightening out any questions that workers might have when engaged in an employment dispute with management. Particularly, their main tasks should only involve the provision of full information/briefing about what precedes and what is next (procedurally), and the preparation of necessary documentation depending on the extra-workplace resolution for worker grievances process they follow (ACAS conciliation or ETs). The first task implies that there would be a complete work which will include an updated brochure written in a non-legal language that analytically and simply describes the whole process of conciliation with ACAS and the process in ETs, being accompanied by useful graphs, but also which explains the nature of the cases/categories of claims, the expected outcomes, all the costs involved, the differences between the two processes, the meaning of settlements, the forms and the way that need to be filled, the documents that need to be gathered and so on. The brochure needs also to be translated into other languages because non-English speakers have also the right to know exactly what they have to do before going through with the process where they can have assistance by their representatives, interpreters and other people. Additionally, it would be quite helpful to present the same material, by uploading guides via YouTube channel, a successful effort which has already started in some law firms in the UK (IntH,Q16). Alternatively, as IntH (Q16) recommended, seminars could be initiated by tribunal judges to educate the users of the ET system about their rights and entitlements.

3) The strengthening/support of mandatory pre-claim ACAS conciliation, especially in the case of vulnerable people (i.e. people with disabilities and elderly people) that can better accommodate their needs in more humane settings and ways, is the most important step for the improvement of such systems which result in the settlement of employment disputes outside an organisation. The interviewees also supported that claimants should try ACAS ADR services to achieve settlements and resolve their issue at an early stage (IntF,Q16,IntK,Q16,IntK,Q16,IntJ,Q16). Particularly, some of them suggested that more emphasis should be given to mediation (IntL,Q16) and that multiple claims should be excluded from early conciliation because this will reduce the administrative burdens and complexities on unions and ACAS (IntR,Q16). ACAS has a very difficult task. However, it is generally worth it to persist in using such a process as it is easily accessible to all parties, simple due to its informal

character, but also because the experience of the ACAS conciliators is evidenced and guaranteed.

4) The provision of tribunal-based assistance, ideally paid for by the state or pro bono employment professionals or law graduates, should also be encouraged. In particular, their responsibilities will involve the evaluation/assessment of tribunal claims (as to whether they have a reasonable chance of success) and the discouragement of those claims which are perceived vexatious, cause delays and significantly affect claimants as they have to pay large issue and hearing fees and any extra costs awarded by the tribunal. Therefore, all representatives will be able to focus on the key legal issues of each case. IntC (Q16), IntH (Q16), IntF (Q16) and IntE (Q16) recommended the restoration of 'assistant legal advice' and the encouragement of the provision of paid 'tribunal-based advocates' because of the current inadequacy of the ET system and the employers' capability to secure legal expenses insurance[65] by paying a subscription, whereas workers have no such equivalent, apart from what is offered from car or household insurances.

5) Due to claimants' inexperience and incapability to judge whether to use/request a full panel in their case, it is suggested that this burden should be removed from them. Undoubtedly, the role of the full panel with the return to the role for non-legal members is vital (IntF,Q16; IntR,Q16) and should be compulsory in complicated and difficult cases, i.e. discrimination, harassment, unfair dismissal, whistleblowing, transfer of undertaking and equal pay cases. Alternatively, the tribunal-based professionals may advise in the cases they evaluate that claimants need to consider a full panel.

6) The percentage of those individuals who are not paid their compensation is still very high (IntK,Q2;IntQ,Q2;IntR,Q7); hence, we cannot talk about equity and efficiency when at the same time, in the case of vexatious claims, the employer gets the money very quickly. Therefore, the improvement in the current 'rubbish' ET enforcement mechanisms, as characterised by IntN (Q16), is necessary. The problem of the non-enforcement of employment tribunal awards becomes more complicated when

[65] Through DASS, RBS Mentor Services, Peninsula Business Services, Riverview Solicitors.

claimants have to pursue further legal proceedings in the civil courts (except those followed in the tribunal). The claimant can neither bear extra financial costs (needs the money/compensation as soon as possible), nor waste more time in courts and tribunals. Furthermore, any other actions on behalf of the claimants as a reminder to the respondents for their debt are unnecessary because none of the parties will have an appetite for further communication/interaction after the ET hearing. Moreover, the newly introduced measure regarding the financial penalty (automatic or not) imposed on employers and the possibility of introducing a naming scheme (i.e. the prospect of being publickly named) in case of non-compliance show Government's eagerness to find a solution. In short, the enforcement of the awards should become an inseparable part of the ET process, where claimants are no longer involved and the state intervenes to secure that all employers comply with the law and their responsibilities, perhaps by evaluating a company's ability to pay through tax records or ideally by giving direct responsibilities for enforcement to ETs, a position that is also maintained by CABs (2013). IntN (Q16) believes that there is no point creating a single enforcement agency as argue CABs for, but it is better to retain the existing agencies.[66]

7) Lastly, because there are implications for the extension of the qualifying period of two years in the case of UDs, for the same reason as implied in the issue of fees (access to justice), it is recommended that such policy should not restrict workers from making a claim on time. Therefore, a one-year period is acceptable since the workers that are more exposed to that policy are the vulnerable workers who work on a part-time basis and tend to work for less than two years. IntC (Qs2,16) believes that there should not be an extended qualifying period for UD cases since there is no qualifying period for most European countries; it was suggested that a shorter period of time should be accepted.

9.4 Which findings can be transferred to other countries and which are specific to the UK environment?

The ETs may differ from similar systems in other countries in the sense that they are independent of the court system public bodies which hear disputes between employers and employees, but almost all of the findings can be useful to other countries.

[66] i.e. HMRC, HCE, GLA

It is generally recognised how vital is for both disputing parties to have the support, encouragement and legal assistance of experienced representatives when addressing to various justice systems. On the other hand, it is noticed that those who are seriously affected, discriminated against or disadvantaged in a legal procedure are those individuals who suffer due to their socioeconomic position and their social exclusion, those who suffer from mental illnesses and disorders and those with different cultural, racial and ethnic backgrounds.

Moreover, it is expected that due to their adversarial character, court-style processes will be experienced negatively by most individuals in any country.

Nevertheless, it is doubtful that a party will be deterred from using a justice system because of, for instance, the imposition of issue or hearing fees from the state, as it only happens in the UK.

9.5 Research contribution

First and foremost, this study is of great significance because it conceptualises workers' experiences and replicates the whole journey (transition) from the time the conflict arises at the workplace until its resolution in ETs in the UK.

The high quality of the responses by the 18 key employment experts helped in the clarifying a number of issues that relate to the functioning of ETs but most importantly, in drawing conclusions as to this transition. Hence, the empirical contribution of this study is the collection of the views of those legal persons in senior positions and the sharing of their tribunal experience.

Accordingly, the research findings of these interviews contributed in concluding that the factor of voice/representation is the most ideal condition for workers that supersedes any other factors that have been identified in both workplace and extra-workplace environments. Therefore, the refinement of Budd and Colvin's framework is my theoretical contribution.

Lastly, my seven policy recommendations that were drafted in consideration of interviewees' recommendations/opinions for the better use of the ET system could be taken into account in a future reform of the system.

Overall, this study can be used as a useful guide, especially for all workers and the TUs.

9.6 Limitations

A limitation may be considered the fact that workers were not directly asked how they are experiencing the ETs and what they believe about the ET system.

9.7 My learning journey-Reflections

The whole doctoral journey was definitely a unique experience. When I started I did not know how it would go and I mistakenly believed that the process will be similar to that followed in prior educational programmes (Bachelor's or Master's degree). The transition from being a student to becoming a researcher/scholar, and looking at things from an angle that I had probably not thought of before, is the most difficult part of this learning journey.

On the other hand, the most stimulating and interesting part of this journey was to learn how to acquire important skills. For instance, the skill of investigating in depth and grasping the content knowledge of the chosen field to study and research (by systematically reading various relevant works, attending conferences, participating in training and other learning courses/workshops, giving presentations, attempting to write some papers). Or of critically thinking and analysing the literature, selecting and evaluating relevant material, critiquing others' work, writing arguments, designing the research project, working with my supervisors, collaborating with other colleagues, collecting and analysing data.

9.8 Overall conclusions

This study was an interesting journey as I had the opportunity to examine and reveal the problems closely which all categories of workers face when resolving their employment conflicts with management, especially when they reach extra-workplace environments such as that of the ETs. In addition, I had the chance to present such a complicated issue in simple terms. In both cases, the research outcome was successful thanks to the meaningful contribution of the 18 employment experts, but also to all colleagues who helped me during the research process.

Taking into account the research findings, it is confirmed that the current extra-workplace environments (in this case the ETs) are unsympathetic, alien, hostile environments, namely, not an ideal world for workers due to lack of voice, equity and efficiency. Moreover, it appears that ideally, all workers will always express the need for representation/voice (and the support of their collective institutions), regardless of their socioeconomic, cultural, educational, gender background, both at national and international level.

Hence, there is no doubt, after advising and applying Budd and Colvin's framework as well as proposing the seven policy recommendations, that there is an urgent need to change and improve the current ET system not only for the sake of workers but for both parties, who seek an equitable and efficient justice system with adequate presence of voice.

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APPENDICES

Appendix 1: Claims to Employment Tribunals, 1972-2015 (Source: Coats, 2010, p.3; Ministry of Justice, 2015c)

Year	Number of tribunal claims	Year	Number of tribunal claims	Year	Number of tribunal claims	Year	Number of tribunal claims
1972/73	17,000	**1983/84**	40,000	**1994/95**	87,000	**2005/06**	115,000
1973/74	17,000	**1984/85**	39,000	**1995/96**	108,000	**2006/07**	130,000
1974/75	18,000	**1985/86**	38,000	**1996/07**	88,000	**2007/08**	190,000
1975/76	38,000	**1986/87**	38,000	**1997/98**	81,000	**2008/09**	151,000
1976/77	45,000	**1987/88**	30,000	**1998/99**	92,000	**2009/10**	236,000
1977/78	44,000	**1988/89**	29,000	**1999/00**	103,000	**2010/11**	218,000
1978/79	43,000	**1989/90**	33,000	**2000/01**	130,000	**2011/12**	186,000
1979/80	41,000	**1990/91**	43,000	**2001/02**	113,000	**2012/12**	192,000
1980/81	41,000	**1991/92**	68,000	**2002/03**	98,000	**2013/14**	106,000
1981/82	43,000	**1992/93**	70,000	**2003/04**	115,000	**2014/15**	61,000
1982/83	42,000	**1993/94**	69,000	**2004/05**	85,000		

Appendix 2: Interview schedule

Changes in the ET system

1) What do you think are the main changes in the way ET hearings are conducted since the 1970s?
2) What are your opinions about the changes to ET law, practice and procedure since April 2012?
3) What impact do you think these changes will have on workers who use the ETs?

Process

4) Based on your experience, what are the main difficulties faced by a claimant in following/managing the ET process?
5) How has this changed over time?
6) Is there any difference in the difficulty likely to be experienced in the ET process by particular social or economic groups?
7) In which cases/types of issues do claimants appear to have more difficulties and why?
8) Do you think that claimants who are expatriates and ethnic minorities experience the tribunal process differently to those who are not?
9) With respect to gender, do you discern any differences in workers' ability to manage the ET process?

Representation

10) How important do you consider representation is for claimants at an ET hearing?
11) Do you think claimants experience ETs differently when they receive professional or other assistance?
12) Do you think claimants who have benefitted from union representation will have a different view about the tribunal process to those who have had no such representation?
13) Do you notice any changes/differences in their behaviour (e.g. distress, detachment, anger, frustration) during a hearing dependent on whether they are represented?

Conclusion

14) Do you discern any other factors (other than representation, socio-economic position) which affect worker's ability to manage the ET process?
15) What do you think are the main expectations of workers in terms of process and legal outcome, once they enter the ET system?
16) What are the main ways in which current ET law, practice and procedure can be improved in order to be of greater value to potential claimants?

Appendix 3: Details of the interviewees

Interviewee A	An experienced union lawyer for nearly 30 years in private practice, an experienced chair and adjudicator, who participates in various professional associations and committees, an accredited mediator, a visiting professor, a former part-time judge in the ETs for nearly 10 years who currently holds a senior position in a non-departmental public body.
Interviewee B	An experienced senior judge who has worked for more than 30 years, also involved in the training of junior judges, an experienced chair in various law associations, a visiting professor who has published widely with a ten-year working experience in a trade union.
Interviewee C	A former academic at British and American universities (currently a visiting professor at a British university) who publishes a lot, an experienced employment consultant who has practised for many years, currently working in a law firm with specialisation in discrimination law, but also a former part-time employment judge in the ETs for nearly 27 years.
Interviewee D	With wide experience in employment cases (i.e. unfair dismissal, discrimination, wrongful dismissal, transfer of undertaking [TUPE]) for over 30 years as a barrister as well as a part-time employment judge (for nearly 13 years) who also writes books on other related topics.
Interviewee E	Specialises in unfair dismissal, whistleblowing, discrimination law, equal pay, redundancy for more than 20 years as a barrister, acting either on behalf of claimants, respondents or trade unions, recently appointed as a fee paid employment judge and also in charge of the organisation, writing and editing of employment law handbooks.
Interviewee F	An experienced employment consultant who has practiced for over 40 years and usually represents companies, senior executives, employers and bankers, who also participates in various legislative and policy committees and associations, regularly comments and advises (through publications and broadcasting) on the latest employment issues.
Interviewee G	A barrister who mainly practises in the area of employment, equality, human rights and discrimination law for 20 years, a qualified mediator who also gives lectures for a variety of institutes, academies and organisations and publishes broadly on employment-related issues.
Interviewee H	With wide expertise in discrimination, equal pay, whistleblowing, unfair dismissal and TUPE cases as a barrister nearly for 20 years but who also undertakes work for ELAAS and the Bar Pro Bono Unit, a trained mediator who has chaired and participated in several professional associations, and who publishes and lectures on various legal matters.
Interviewee I	The representative of the younger generation of legal professionals in this study, with an exceptional educational background, already involved in high-profile employment cases (i.e. unfair dismissal, discrimination, TUPE, collective redundancies, unlawful deductions) as a barrister and ar accredited civil and commercial mediator.
Interviewee J	A trade union solicitor who currently holds a senior position but with vast experience in former other related to employment law responsible positions, with extensive expertise in employment-related issues such as industrial action, TUPE, equal pay, holiday pay, who constantly gives consultation and public lectures to interested (union) clients and publishes widely.
Interviewee K	An experienced employment consultant for 30 years who now focuses on the training of trade unions and their members, an experienced chair in various law and policy associations and committees with a number of

	publications and other research contributions.
Interviewee L	An experienced employment barrister nearly for 35 years (e.g., in equal pay cases, TUPE, human rights law, unfair dismissal, discrimination, judicial review) who holds a senior position, acts for employers and employees but also assists and works for pro bono services, advice centres and other (Governmental or non-Governmental) institutions, a High Court judge, a trained mediator, who frequently gives lectures to trade unions, businessmen, other law professionals and educational institutions, publishes widely and chairs in various professional associations, committees and bodies.
Interviewee M	An experienced legal counsel at a high position level with specialisation in employment, discrimination, human rights, alternative dispute resolution and public law for nearly 40 years, with research contributions, who acts for individuals, trade unions, companies, universities, public bodies, local authorities in the UK and in Europe, chairs in committees and associations and gives lectures on various legal developments.
Interviewee N	A barrister with expertise in employment, discrimination, family and housing law, working for trade unions, a former political activist, a sociologist and an academic historian with exceptional educational background and various publications, who teaches in British universities and abroad, and regularly gives public lectures to interested parties.
Interviewee O	A national official, with wider expertise on employment, equality and race issues, who is in collaboration with other UK unions as well, and participates in employment-related committees, campaigns and conferences.
Interviewee P	A senior Government officer who advises on policy matters regarding workplace dispute resolution and then their enforcement.
Interviewee Q	An experienced barrister for nearly over 10 years, who currently works in the Free Representation Unit (FRU), with background knowledge in history, acting mainly on behalf of claimants, currently responsible for the supervision of a number of cases which are conducted by volunteers, who participates in various law associations and committees, publishes, reports and consults on issues that arise from ET practice.
Interviewee R	A senior officer with broad research experience in employment-related matters, who currently works at one of the largest unions, coordinates the network of a union's legal officers and is responsible for policy on labour and trade union law (ETs, dispute resolution, TUPE, equality, redundancy).